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Supreme Court, U.S.  
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In the Supreme Court of the United States

October Term, 1987

THE TOLEDO TRUST COMPANY, AS TRUSTEE OF  
TRUST NO. 4118 AND THE TOLEDO TRUST COM-  
PANY, AS TRUSTEE OF TRUST NO. 4117,

*Petitioners,*

vs.

SANTA BARBARA FOUNDATION,

*Respondent.*

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**APPENDIX TO  
PETITION FOR WRIT OF CERTIORARI  
To the Ohio Supreme Court**

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**APPENDIX**

**OPINION OF THE SUPREME COURT OF OHIO**

(Decided August 26, 1987)

No. 86-1064

**THE SUPREME COURT OF OHIO  
COLUMBUS**

TOLEDO TRUST COMPANY, TRUSTEE OF  
TRUST NO. 4117,  
*Appellee,*

v.

SANTA BARBARA FOUNDATION,  
*Appellant,*

and

TOLEDO TRUST COMPANY, TRUSTEE OF  
TRUST NO. 4118, *et al.,*  
*Appellees.*

[32 Ohio St. 3d 141]

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*Trusts—Testamentary special power of appointment conferred by Ohio trust—Effective exercise by donee determined by law of his domicile—Determination of intent of donee in exercising power is entitled to full faith and credit, when—Foreign judgment carries presumption of validity, when.*

O.Jur 3d Estates etc. § 192.

1. The determination of whether a testamentary special power of appointment conferred by an Ohio trust has been effectively exercised by the donee is gov-

erned by the law of the jurisdiction wherein the donee was domiciled at the time of the power's purported exercise.

O.Jur 3d Judgments § 351.

2. A foreign judgment pronounced by a court of record of general jurisdiction, regular on its face, carries with it the presumption of validity.
3. The determination of the intent of a donee in exercising a testamentary special power of appointment by a court of competent jurisdiction of the state within which the donee is domiciled at the time of the power's exercise is binding in any subsequent judicial proceedings in Ohio and entitled to full faith and credit with respect thereto.

APPEAL from the Court of Appeals for Lucas County.

On January 28, 1960, a written trust agreement was executed between Toledo Trust Company and Nancy S. Jones whereby a trust for the benefit of Marcia MacDonald Rivas, daughter of Nancy S. Jones, was created ("Rivas trust"). Contemporaneously with the creation of this trust, another trust was created for the benefit of Roberta Pawlak, the other daughter of Nancy S. Jones ("Pawlak trust"). The Rivas trust granted to Marcia Rivas a testamentary special power of appointment whereby she could designate certain charitable beneficiaries of the trust corpus. The agreement provided in relevant part:

"(2) Upon the death of the Donor's said daughter, the then existing principal shall be distributed to such one or more among her issue, spouses (including widows and widowers) of such issue, sister, sister's issue, and any institutions or associations organized and operated

exclusively for religious, charitable, scientific, literary or educational purposes, in such shares or proportions and upon such terms, conditions and estates in trust or otherwise, as the Donor's said daughter may by her Last Will and Testament appoint, provided that her said Will shall expressly refer to the power of appointment hereunder, and provided further that such power of appointment shall not be exercisable in favor of the Donor's said daughter, her estate, her creditors or the creditors of her estate."

The Rivas trust further provided:

"(3) To the extent the Donor's daughter fails effectively to exercise the power of appointment granted to her in the proceeding paragraph (2), at the time of her death the then existing principal (including accumulated income) shall be held or distributed as follows:

"(a) If the Donor's daughter leaves issue living at the time of her death, such principal shall vest per stirpes in and, subject to the provisions of paragraph (4) hereof, be distributed to such of her issue as are living at that time;

"(b) If said daughter leaves no issue living at the time of her death, then such principal shall be distributed as follows:

"(i) If the Donor's daughter, Roberta, is living at that time, it shall be added to and become a part of the trust created simultaneously herewith for the benefit of the Donor's daughter, Roberta, with the Toledo Trust Company as Trustee and designated on the trustee's records as Trust No. 4118 and shall be administered and distributed in accordance with the provisions thereof.

\* \* \*

Marcia Rivas died on November 10, 1982, a resident of Santa Barbara, California. At the time of her death, she was survived by her sister, Roberta Pawlak. Her last will and testament was admitted to probate on August 1, 1983. The will provided for the exercise of the testamentary special power of appointment granted by the trust agreement. It provided in relevant part:

Under that certain Trust Agreement entered into January 25 [sic], 1960, between my mother, NANCY S. JONES and TOLEDO TRUST COMPANY, I have a special power of appointment. The permissible appointees under this power of appointment are limited to my issue, spouses (including widows and widowers) of such issue, my sister, my sister's issue, and any institutions or associations organized and operated exclusively for religious, charitable, scientific, literary or educational purposes. I exercise this power of appointment by appointing all property subject to this power as follows:

\*\*\*

"(I) Ten percent (10%) thereof shall be distributed to ALCOHOLICS ANONYMOUS, Central Office, 1129 State Street, Santa Barbara, California 93101."

Alcoholics Anonymous declined to accept more than \$500 of the trust distribution—adhering to a policy whereby gifts in excess of this amount are accepted only from members of the organization.

On September 16, 1983, appellant petitioned the Superior Court of the state of California, County of Santa Barbara, for a determination of entitlement to the trust proceeds. Notice of this action was received by appellees Toledo Trust Company and Nancy S. Jones.

The superior court, utilizing the equitable doctrine of *cy pres*, substituted the Santa Barbara Foundation for Alcoholics Anonymous as an appointee of the trust proceeds. Santa Barbara Foundation is a non-profit corporation organized for the treatment and care of alcoholics. The court entered an order directing that Santa Barbara be substituted for Alcoholics Anonymous as the beneficiary of ten percent of the trust assets.

Having obtained the California order, the Santa Barbara Foundation applied to Toledo Trust Company, as trustee of the Rivas trust, for payment of the funds governed by the order. The trustee refused and thereafter instituted the present declaratory judgment action.

Ruling on cross-motions for summary judgment filed by the respective parties, the trial court determined that the refusal of Alcoholics Anonymous to accept all but \$500 of the distribution defeated an effective exercise of power of appointment under the trust. The court therefore granted summary judgment in favor of the Toledo Trust Company, as trustee of the Pawlak trust, and ordered that pursuant to the terms of the Rivas trust agreement, the amount in controversy be distributed to the Pawlak trust. This determination was affirmed by the court of appeals.

The cause is now before this court upon the allowance of a motion to certify the record.

*Marshall & Melhorn* and *Donald F. Melhorn, Jr.*, for appellee Toledo Trust Company, Trustee for Trust No. 4117.

*Watkins, Bates & Handwork*, *William F. Bates*, *John J. McHugh III* and *Gary O. Sommer*, for appellant.

*Robinson, Curphey & O'Connell and Michael S. Messenger*, for appellees Toledo Trust Company, Trustee for Trust No. 4118 and Nancy S. Jones.

**SWEENEY, J.** The crucial question presented by this appeal is the effect, if any, that the order of the California superior court has on the instant proceeding. It is axiomatic that, in interpreting the terms of a will, the intention of the testator is paramount. *Sherman v. Sherman* (1966), 5 Ohio St. 2d 27, 34 O.O. 2d 48, 213 N.E. 2d 360; *Johnson v. Johnson* (1894), 51 Ohio St. 446, 38 N.E. 61; *Townsend's Exrs. v. Townsend* (1874), 25 Ohio St. 477. This rule is equally applicable in determining whether a testamentary power of appointment has been exercised. *Bishop v. Remple* (1860), 11 Ohio St. 277, 282; *Arthur v. Odd Fellows' Beneficial Assn.* (1876), 29 Ohio St. 557, 561.

The ascertainment of testamentary intent often requires that reference be made to common-law or statutory rules of construction. Where such reference is necessary, the law of the state wherein the testator was domiciled and his will probated is to be applied. *Lozier v. Lozier* (1919), 99 Ohio St. 254, 124 N.E. 167.

While the specific issue involved in this appeal has not been previously submitted for our consideration, we are persuaded that the law of the state in which the decedent resided at the time of her death should apply in determining whether there has been an effective exercise of her testamentary special power of appointment. On this point the observation by the Seventh Circuit Court of Appeals in *White v. United States* (C.A. 7, 1982), 680 F. 2d 1156, 1159, is particularly instructive: "Given the realities of the situation, it seems logical to focus

on the donee's express, implied, or constructive intent to exercise his power as determined by the rules of his state. The language of the donee's will is his own and should be considered according to the laws under which his will was drafted and with which he was presumably most familiar, those of his own domicile." (Emphasis added.) See, also, *In re Morgan Guaranty Trust Co.* (1971), 28 N.Y. 2d 155, 320 N.Y. Supp. 2d 905, 269 N.E. 2d 571; *Ward v. Stanard* (1903), 82 App. Div. 386, 81 N.Y. Supp. 906.

Marcia MacDonald Rivas was a California domiciliary at the time of her death. Her will was executed and admitted to probate in the state of California. In its order determining entitlement to distribution of the Rivas estate, the California superior court quite properly applied the cy pres doctrine to the present controversy. It is beyond question that application of the doctrine was in accordance with California law. See *O'Hara v. Grand Lodge, Independent Order of Good Templars* (1931), 213 Cal. 131, 2 P. 2d 21; *In re Faulkner's Estate* (1954), 128 Cal. App. 2d 575, 275 P. 2d 818.

We, therefore, hold that the determination of whether a testamentary special power of appointment conferred by an Ohio trust has been effectively exercised by the donee is governed by the law of the jurisdiction wherein the donee was domiciled at the time of the power's purported exercise.

Despite the correct application of California law to the testamentary disposition, appellees, Toledo Trust Company, as trustee of the Pawlak trust, and Nancy Jones, maintain that the judgment of the California superior court is not entitled to full faith and credit because the

court failed to obtain jurisdiction over the trustee or the trust res. There are two elements to this argument.

As an initial matter, it is necessary to consider whether appellees were properly apprised of the California proceedings. In stipulations of fact submitted to the Lucas County Court of Common Pleas, Toledo Trust Company has acknowledged receiving notice of the entitlement hearing. Moreover, the findings of the California superior court include a determination that "[a]ll notices of the hearing have been given as required by law."

This court has previously observed that "[a] judgment pronounced by a court of record of general jurisdiction, regular on its face, carries with it the presumption of validity." *Ford v. Ideal Aluminum, Inc.* (1966), 7 Ohio St. 2d 9, 13, 36 O.O. 2d 5, 7, 218 N.E. 2d 434, 436. This presumption applies with equal force to judgments rendered by the courts of sister states. Appellees do not contend that the California proceeding failed to comply with the law of that state, nor do they adduce any evidence in support of such contention. We, therefore, hold that a foreign judgment pronounced by a court of general jurisdiction, regular on its face, carries with it the presumption of validity.

An additional component of the argument advanced by appellees concerns the perceived deficiency of the California court in obtaining jurisdiction over the trust assets located in Ohio. In support of their position, appellees rely upon the holding of the United States Supreme Court in *Hanson v. Denckla* (1958), 357 U.S. 235. This argument, however, misapprehends the nature of the California proceeding. In *Hanson v. Denckla, supra*, the Supreme Court clearly stated the basis for its determination

not to afford full faith and credit to a Florida decision affecting a Delaware trust: " \* \* \* [s]o far as it purports to rest upon jurisdiction over the trust assets, the judgment of the Florida court cannot be sustained." *Id.* at 250. The California judgment in the case at bar presumed to do no such thing. The decision of the California superior court merely sought to ascertain and give effect to the testamentary intent of a California domiciliary. As mentioned above, it was the proper forum to make this determination. Once rendered, the judgment was entitled to full faith and credit in any subsequent Ohio proceeding governing the disposition of the trust assets.

It is our conclusion, therefore, that the determination of the intent of a donee in exercising a testamentary special power of appointment by a court of competent jurisdiction of the state within which the donee is domiciled at the time of the power's exercise is binding in any subsequent judicial proceedings in Ohio and entitled to full faith and credit with respect thereto.

Accordingly, the judgment of the court of appeals is reversed and the cause is remanded to the trial court for further proceedings consistent with this opinion.

*Judgment reversed  
and cause remanded.*

MOYER, C.J., HOLMES, DOUGLAS, WRIGHT and H. BROWN,  
JJ., concur.

LOCHER, J., dissents.

LOCHER, J., dissenting. Although I have no quarrel with the general principles of law expressed in the syllabus and majority opinion, I must dissent because it is clear that the California superior court erroneously ap-

plied the doctrine of *cy pres* in the case *sub judice*. Because the California judgment is contrary to California law, and because the California court had no jurisdiction over the trust assets in question, I would hold that the judgment of that court is not entitled to full faith and credit in the courts of Ohio.

To begin, a review of relevant California law reveals a statute which expressly provides for a result contrary to that reached by the California superior court and the majority opinion. California Civ. Code Section 1389.3 states:

“(a) Except as provided in subdivision (b), *when the donee of a discretionary power of appointment fails to appoint the property, releases the entire power, or makes an ineffective appointment, in whole or in part, the appointive property not effectively appointed passes to the person or persons named by the donor as takers in default or, if there are none, reverts to the donor.*

“(b) When the donee of a general power of appointment makes an ineffective appointment, an implied alternative appointment to the donee’s estate may be found if the donee has manifested an intent that the appointive property be disposed of as property of the donee rather than as in default of appointment.” (Emphasis added.)

This statute is clearly on point. The donee, Marcia Rivas, made an ineffective appointment when Alcoholics Anonymous refused to accept more than \$500 of the trust distribution. Marcia Rivas also had a discretionary power of appointment. See California Civ. Code Section 1381.4. Thus, under Section 1389.3(a), the trust assets not effectively appointed by the will of Marcia Rivas pass to the taker in default as provided by the trust document,

namely the Roberta Pawlak trust. Also on point is *Estate of Eddy* (1982), 134 Cal. App. 3d 292, 184 Cal. Rptr. 521, in which it was held that under the statute, where a donee failed to effectively exercise a power of appointment in her will, the trust property passed to the donor's son, who was named as the taker in default. In light of the statute and this case, it can only be concluded that the California superior court erred when it applied the doctrine of cy pres to the trust assets in question.

The California decision is also invalid because it ignored the express language of the trust to the effect that if the donee failed to make an effective appointment, the trust property was to be held for or distributed to one of the named takers in default. The cy-pres doctrine is designed to give effect to the intent of a donor, not to thwart it. For this reason, the cy-pres doctrine does not apply where, as here, the donor's intent is to the contrary. See, e.g., Restatement of the Law 2d, Trusts (1959), Section 399, Comment c, at 299; Section 401, Comment d, at 311.

Generally, the final judgment of a sister state's court must be given full faith and credit where that court had jurisdiction over the parties and the subject matter, even if the judgment is erroneous. See *Milliken v. Meyer* (1940), 311 U.S. 457, 462. However, a judgment of a sister state's court is subject to collateral attack in Ohio if there was no subject matter or personal jurisdiction to render the judgment under the sister state's internal law, and under that law the judgment is void.

The California superior court in this case had no jurisdiction over either Toledo Trust Company, the trustee, or the trust assets. The mere fact that notice of the hearing in the California superior court was mailed to Toledo

Trust does not subject Toledo Trust to the jurisdiction of that court. Furthermore, since the trust assets belong to the Roberta Pawlak trust, the California superior court had no jurisdiction over them. See *Hanson v. Denckla* (1958) 357 U.S. 235. The majority unconvincingly attempts to distinguish *Hanson* by stating that the California decision "merely sought to ascertain and give effect to the testamentary intent of a California domiciliary," rather than exercise jurisdiction over the trust assets. In my view, this is a meaningless distinction, for how could the California court purport to decide to whom to distribute the trust assets without exercising jurisdiction over those assets?

In summary, the majority opinion is ill-founded because it merely presumes that the California judgment is valid. A closer look, however, reveals that under California law the California superior court had no jurisdiction over the parties or the subject matter in question, rendering the California judgment void. Consequently, I would hold that the California judgment is not entitled to full faith and credit, and I would affirm the summary judgment of the trial court in favor of the Toledo Trust Company. Accordingly, I dissent.

**DECISION AND JOURNAL ENTRY OF THE COURT  
OF APPEALS OF LUCAS COUNTY, OHIO**

(Filed May 9, 1986)

C. A. No. L-85-293

**COURT OF APPEALS OF OHIO  
SIXTH DISTRICT  
COUNTY OF LUCAS**

**THE TOLEDO TRUST COMPANY AS TRUSTEE  
OF TRUST NO. 4117,  
*Appellee,***

vs.

**SANTA BARBARA FOUNDATION,  
*Appellant,***

and

**THE TOLEDO TRUST COMPANY AS TRUSTEE OF  
TRUST NO. 4118**

and

**NANCY S. JONES,  
*Appellees.***

**APPEAL FROM LUCAS COUNTY COMMON PLEAS COURT  
No. CV 83-2699**

**DECISION AND JOURNAL ENTRY**

This case comes before the court on a judgment of the Lucas County Court of Common Pleas. The trial court, upon review of the stipulations and documents in evidence, granted plaintiff-appellee's motion for summary judgment. The court ordered that the assets disclaimed by the Al-

coholics Anonymous were to be distributed to trust No. 4118, decedent's sister's trust.

On January 28, 1960, Nancy Jones named the Toledo Trust Co. as trustee for two trusts which were created for the benefit of her two daughters, Marcia McDonald Rivas and Roberta Pawlak. The trust contained a testamentary special power of appointment allowing each daughter to make distributions of principal and accumulated income to specified members of a class; said class included each daughter's issue, spouses of said issue, a sister, the sister's issue, and institutions organized and operated exclusively for religious, charitable, scientific, literary or educational purposes.

The trust agreement also contained the following provision, as set forth in pertinent part:

"(3) To the extent the Donor's daughter fails effectively to exercise the power of appointment granted to her in the preceding paragraph (2), at the time of her death the then existing principal (including accumulated income) shall be held or distributed as follows \* \* \* [.]"

Provision (3) then provided that said proceeds would go to the deceased daughter's issue *per stirpes*, if any. If the daughter had no surviving issue, the proceeds were to go to her sister's trust, if the sister was living at the time of the death. This latter provision was pertinent since decedent's sister was alive at the time of decedent's death.<sup>1</sup>

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1. There were additional provisions pertaining to the distribution of the proceeds upon the death of Jones' daughter, if the deceased individual's sister was not alive at the time of the death. However, those provisions are not applicable based on the facts set forth in this case.

On November 10, 1982, Marcia Rivas died, and was survived by her sister, Roberta Pawlak. In her last will and testament Marcia Rivas exercised the special power of appointment contained in the trust agreement. Distributions were made in favor of eleven charities, including Alcoholics Anonymous of Santa Barbara, California. Alcoholics Anonymous declined the gift, except for an amount totaling \$500. Subsequently, the Superior Court of the State of California, County of Santa Barbara, entered an order directing that the proceeds be distributed to Alcoholics Anonymous, in excess of \$500, be paid to the Santa Barbara Foundation, appellant herein.

Toledo Trust declined to distribute the funds, and sought direction of the court to determine who was entitled to receive the proceeds. At the lower court, appellant raised three principle issues. First, appellant argues that decedent made an effective and valid exercise of her special power of appointment when she allocated the proceeds to Alcoholics Anonymous, and that the California court, by application of the doctrine of *cy pres*, fulfilled her donative intent by ordering the distribution of the proceeds to appellant. Alternatively, appellant argues that the doctrine of *cy pres* should apply even under the laws of the state of Ohio and distribution should be made accordingly. Further, appellant argues that the California judgment was entitled to full faith and credit and as such, appellant was entitled to receipt of the proceeds.

Defendant Toledo Trust contended that there was no valid exercise of the special power of appointment, since Alcoholics Anonymous refused to accept the distribution of the proceeds. Toledo Trust further argued that the doctrine of *cy pres* was not applicable, and that the judg-

ment of the California court was not entitled to full faith and credit.

The trial court, after thorough analysis of the novel issues raised, ruled that there had not been a valid and effective exercise of the special powers of appointment. Having so ruled, the court concluded that it need not reach the issues of application of *cy pres* and the question concerning whether full faith and credit should be granted the California judgment.

Based on the well-reasoned opinion of the trial court, which this court adopts as part of its reasoning, we affirm the decision of the lower court.<sup>2</sup>

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2. The court stated as parts of its decision:

"The court has conducted a thorough review of the case law in Ohio and finds itself without guidance on this issue. While the case law has addressed the technical requirements for a valid exercise it has not addressed the effect of an appointee's disclaimer on the exercise of a special power of appointment. Santa Barbara's position is that since Ms. Rivas complied with both the common law requirements necessary for a valid exercise and with the specific terms of the Rivas trust, the exercise was valid. Defendant Toledo Trust distinguished between a valid exercise and an effective exercise, arguing that an effective exercise requires an actual transfer of the appointed assets to the donee. Since Alcoholics Anonymous disclaimed all but \$500 of the appointed assets, Toledo Trust maintains that the exercise was ineffective and the gift-over provision takes effect.

"After careful consideration of the ramification of both positions, the Court finds the argument of defendant Toledo Trust persuasive. Critical to the Court's decision is the principle that property over which one has a special power of appointment is considered to be property of the donor of the power; the donee of the power only acts on behalf of the donor. *Cleveland Trust Co. v. McQuade*, 106 Ohio App. 237 (1957). Unless the donee effectively transfers the property to the appointee, ownership remains in the donor; the donee never becomes the owner of the property. Therefore, it appears to this Court that acceptance by the appointee is necessary for the effective transfer of owner-

(Continued on following page)

The primary issue is whether the trust agreement, dated January 28, 1960, permits the application of the doctrine of *cy pres* to establish that the donee's testamentary disposition constituted a valid and effective exercise of the special power of appointment, where the donee's disposition was declined by the beneficiary.<sup>3</sup>

As recognized by the lower court, the validity of the special power of appointment is to be determined under the law governing the validity of the instrument under which the power was created. Bogert, Trust & Trustees (2d Ed. Rev. 1977 & Supp. 1985) 482, Section 299; *Cleveland Trust Co. v. Shuman* (1974), 68 O.O. 2d 332.

A valid exercise of a special power of appointment occurs when the donee's instrument meets the formalities

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Footnote continued—

ship and thereby, for an effective exercise of the power. Accord, *Commissioner v. Cardeza's Estate*, 173 F. 2d 119 (3d Cir. 1949); 5 Page on Wills §45.23 (4th Ed. 1962); see, 5 A.W. Scott, *The Law of Trusts*, §427 (3d Ed. 1967).

"Application of the foregoing to the instant facts requires the Court to conclude that the exercise of the special power of appointment was ineffective, leaving ownership of the assets with the donor. Thus, it is the donor's intent which will guide distribution of the assets and not that of the donee. The donor's intent is clearly evidenced by the gift-over provision which requires distribution of the assets to trust No. 4118 in the event of default of appointment. Accordingly, the Court finds that the assets disclaimed by Alcoholics Anonymous are to be distributed pursuant to that provision.

"In light of the foregoing determination, the Court need not reach the issues of the validity of the California judgment and the applicability of the doctrine of *cy pres*."

3. Appellants state as their assignments of error:

"Assignment of Error No. 1: The Trial Court Erred in Ruling that Marcia McDonald Rivas Failed Effectively to Exercise the Power of Appointment Granted to Her Under Trust No. 4117."

required by the applicable state law and complies with the limitations set forth in the originating document.

While the formalities may have been met in this case, the question of the effectiveness of the disposition remains in question due to Alcoholics Anonymous's refusal to accept the proceeds.

In this case, the disposition of the trust proceeds was unquestionably intended for charitable purposes. It is equally clear that the intended distribution was rejected and as such the trust failed. At this point in the lower court's analysis, the court determined that the rejection of the distribution constituted an ineffective transfer of the proceeds and as such, the lower court rejected Santa Barbara's claim for the proceeds. While the lower court was correct in its conclusion, the court only made the first inquiry in the analysis.

The initial inquiry necessitates a review of the document creating the special power of appointment to determine the extent of the powers granted. The next inquiry necessitates a determination of whether the exercise of the special power of appointment failed. If the initial exercise of the special power of appointment fails for whatever purpose, the third step requires the determination of whether the originating document permits the failed distribution to be allocated to someone other than the intended beneficiary. Fourth and finally, if the originating document permits a failed distribution to be allocated to another, the court must then determine whether the doctrine of *cy pres* may be applied in order to carry out the intent of the donee. Cf. Restatement of Law Second, Trusts 2d (1957 & Supp. 1983-84) 299, 305, Section 399, comments c and o.

Here the original device failed. As such, we must determine whether the trust agreement permitted the donee to make an additional distribution of the property.

In instances where the donee has been given the special power of appointment, the intent of the donee's exercise of power must be construed within the basic limitations prescribed by the donor. Consequently, while the donee may have manifested a general donative intent which would have supported the application of the doctrine of *cy pres*, the application of the doctrine may not be applied if the settlor, in the trust agreement, restricted the donee's special powers of appointment.

With respect to specific provisions being set forth in the trust, the Restatement of Law, *supra*, at 299, Section 399, has stated, in situations not specifically relating to special powers of appointment:

"If property is given in trust to be applied to a particular charitable purpose, and it is provided by the terms of the trust that if the purpose should fail the trust should terminate, the property will not be applied *cy pres* on the failure of the particular purpose, since the terms of the trust negative the existence of a general charitable intention. In such a case there will be a resulting trust for the settlor or his estate, unless there is a valid gift over. See Section 413. \* \* \*"

Restatement of Law, Trusts, *supra*, at 348, Section 413, comment b, states further:

"If the settlor properly manifested an intention that if the charitable trust should fail the trustee should hold the surplus upon another charitable trust or upon

a valid private trust, no resulting trust arises but the trustee holds the property upon the other charitable or private trust."

The foregoing passages serve to recognize that the doctrine of *cy pres* is not applicable where the terms of the trust agreement provide for an alternative distribution of the proceeds, if the donee fails to make an effective exercise of the special power of appointment.

In this case, the originating document, i.e. trust agreement, states that if there is an ineffective testamentary disposition, then the proceeds shall go to one of several alternatives. This provision serves to negate the application of the doctrine of *cy pres* since the original donor made an express statement as to who should receive the proceeds upon an ineffective transfer. See Restatement of the Law, Trusts, Sections 348, 349 and 413. The express provisions in the document prohibit the application of the *cy pres* doctrine. Accordingly, when the distribution to the Alcoholics Anonymous was declined, the testamentary disposition failed. The application of the doctrine of *cy pres* was not possible since the trust agreement provided for an alternative disposition of the proceeds. Said alternative disposition required, based upon the facts, that the proceeds that were to be allowed to Alcoholics Anonymous shall be placed in trust No. 4118, the Pawlak trust.

Accordingly, appellant's three assignments of error are found not well-taken.

On consideration whereof, this court finds substantial justice was done the parties complaining, and judgment of the Lucas County Court of Common Pleas is affirmed. Cause is remanded to said court for further proceedings according to law. Costs to appellants.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure. See also Supp. R. 4, amended 1/1/80.

ARTHUR WILKOWSKI, J.,  
RICHARD B. MCQUADE, JR., J., and  
JAMES E. THIERRY, J.  
Concur.

Judge Richard B. McQuade, Jr., Fulton County Court of Common Pleas, and Judge James E. Thierry, Ottawa County Court of Common Pleas, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.

**SUPPLEMENTAL DECISION AND ORDERS OF  
THE COURT OF APPEALS OF LUCAS COUNTY,  
OHIO**

(Filed May 21, 1986)

No. L-85-293

IN THE COURT OF APPEALS OF LUCAS COUNTY

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THE TOLEDO TRUST COMPANY AS TRUSTEE  
OF TRUST NO. 4117,  
*Appellee,*

v.

SANTA BARBARA FOUNDATION,  
*Appellant,*

and

THE TOLEDO TRUST COMPANY AS TRUSTEE OF  
TRUST NO. 4118 AND NANCY S. JONES,  
*Appellees.*

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**DECISION AND JOURNAL ENTRY**

This matter comes before the court, *sua sponte*. On May 9, 1986, this court released a decision entitled *The Toledo Trust Co. v. Santa Barbara Foundation* (May 9, 1986), Lucas App. No. L-85-293, unreported.

On page three, paragraph one, the first sentence reads as follows:

"Defendant Toledo Trust contended that there was no valid exercise of the special power of appointment, since Alcoholics Anonymous refused to accept the distribution of the proceeds."

The sentence is corrected to read as follows

"Defendant Toledo Trust contended that there was no effective exercise of the special power of appointment, since Alcoholics Anonymous refused to accept the distribution of the proceeds."

ARTHUR WILKOWSKI,  
RICHARD B. MCQUADE, JR., and  
JAMES E. THIERRY, JJ.,  
Concur.

Judge Richard B. McQuade, Jr., Fulton County Court of Common Pleas, and Judge James E. Thierry, Ottawa County Court of Common Pleas, sitting by assignment of the Chief Justice of the Supreme Court of Ohio.

**OPINION AND JUDGMENT ENTRY OF THE COURT  
OF COMMON PLEAS OF LUCAS COUNTY, OHIO**

(Filed July 29, 1985)

Case No. 83-2699

IN THE COURT OF COMMON PLEAS  
OF LUCAS COUNTY, OHIO

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THE TOLEDO TRUST COMPANY, AS TRUSTEE  
OF TRUST NO. 4117,  
*Plaintiff,*

vs.

SANTA BARBARA FOUNDATION, *et al.*,  
*Defendants.*

---

**OPINION AND JUDGMENT ENTRY**

This cause comes before the Court upon the cross-motions of defendant Santa Barbara Foundation and defendant Toledo Trust Company, as Trustee of Trust No. 4118, for summary judgment. The cause was submitted on the pleadings, the written stipulations of fact, and the written memoranda of counsel and attachments thereto. Upon consideration of the same, the Court finds that defendant Toledo Trust's motion is well-taken and is granted in accordance with the principles set forth herein.

The facts as stipulated to by the parties are as follows. On January 28, 1960, Nancy S. Jones, as Donor, entered into two written trust agreements with the Toledo Trust Company as Trustee. Trust No. 4117 was created for the Donor's daughter, Marcia McDonald Rivas (hereafter Rivas trust) and Trust No. 4118 was created for the

Donor's other daughter, Roberta Pawlak (hereafter Pawlak trust). Both trusts granted the beneficiary a testamentary special power of appointment over the corpus of the trust with a gift-over provision in the event the beneficiary failed to effectively exercise the power. In default of appointment, the principal of the Rivas trust was to pass to Ms. Rivas' issue or, if none, to the Pawlak trust.

Marcia McDonald Rivas died on November 10, 1982, a resident of Santa Barbara, California; she left no issue and was survived by her sister, Roberta Pawlak. Ms. Rivas left a Last Will and Testament dated March 14, 1980 which was admitted to probate in the Superior Court of the State of California, County of Santa Barbara, on August 1, 1983. Pursuant to her will, Mr. Rivas acted to exercise her special power of appointment by appointing ten percent (10%) of all property subject to the power of appointment to Alcoholics Anonymous, Santa Barbara, California. Alcoholics Anonymous declined to accept all but \$500.00 of the bequest. The Santa Barbara Foundation subsequently filed a Petition for Determination of Entitlement to Distribution of Estate in the Supreme Court of the State of California, County of Santa Barbara, seeking to be appointed charitable trustee of the declined assets pursuant to the doctrine of *cy pres*. Hearing on the Petition was set for October 6, 1983 and notice was sent to all persons who may have had an interest in the estate, including the Toledo Trust Company.

On October 13, 1983, the Supreme Court ordered that 10% of the assets of the Rivas trust be distributed to Santa Barbara Foundation, to be held and administered as a charitable trust pursuant to the terms of the Order. Following the ruling, Santa Barbara applied to the Toledo

Trust Company for payment of the funds. Toledo Trust has declined to pay the funds pending the advice and instruction of the Court.

The motions for summary judgment present a number of complex and novel issues to the Court. Defendant Santa Barbara Foundation perceives the critical issue to be the power of the California Court to appoint it as charitable trustee of the disclaimed assets of Alcoholics Anonymous. This position presumes that the exercise of the special power of appointment was effective and that disposition of the disclaimed bequest was to be determined by the intention of Ms. Rivas, a matter of will construction, and therefore, determinable pursuant to California law. Santa Barbara thereby argues that effect should be given to the California proceeding. Alternatively, Santa Barbara maintains that application of Ohio's doctrine of cy pres will yield the same result.

In opposition, defendant Toledo Trust, as Trustee of Trust No. 4118, presents three issues to the Court. First, the defendant argues that the California judgment should not be afforded full faith and credit as it was rendered without jurisdiction over the trust res, the trustee, or the takers in default. Second, Toledo Trust contends that the exercise of the power of appointment was not effective, thereby triggering the gift-over provision and requiring distribution of the disclaimed assets to Trust No. 4118. Finally, the defendant claims that the instant facts do not support the application of the doctrine of cy pres, either under Ohio or California law.

The Court perceives the threshold issue to be the effectiveness of the exercise of the power of appointment. If the exercise was ineffective, the remainder interest of

Trust No. 4118 was not divested and the Court would then be confronted with the issue of the validity of the California judgment. If the exercise of the power was effective, thereby divesting Trust No. 4118 of its remainder interest the jurisdiction of the California court was properly exercised and the judgment entitled to full faith and credit.

It is undisputed that this question is to be determined under the law of the domicile of the donor of the power. *Cleveland Trust Co. v. Shuman*, 68 Ohio Ops.2d 332 (1974); *First Central Trust Co. v. Claflin*, 49 Ohio L. Abs. 29 (1947). Therefore, the effectiveness of the exercise of the power must be determined under the law of Ohio.

The Court has conducted a thorough review of the case law in Ohio and finds itself without guidance on this issue. While the case law has addressed the technical requirements for a valid exercise it has not addressed the effect of an appointee's disclaimer on the exercise of a special power of appointment. Santa Barbara's position is that since Ms. Rivas complied with both the common law requirements necessary for a valid exercise and with the specific terms of the Rivas Trust, the exercise was valid. Defendant Toledo Trust distinguishes between a valid exercise and an effective exercise, arguing that an effective exercise requires an actual transfer of the appointed assets to the donee. Since Alcoholics Anonymous disclaimed all but \$500.00 of the appointed assets, Toledo Trust maintains that the exercise was ineffective and the gift-over provision takes effect.

After careful consideration of the ramifications of both positions, the Court finds the argument of defendant Toledo Trust persuasive. Critical to the Court's decision

is the principle that property over which one has a special power of appointment is considered to be property of the donor of the power; the donee of the power only acts on behalf of the donor. *Cleveland Trust Co. v. McQuade*, 106 Ohio App. 237 (1957). Unless the donee effectively transfers the property to the appointee, ownership remains in the donor; the donee never becomes the owner of the property. Therefore, it appears to this Court that acceptance by the appointee is necessary for the effective transfer of ownership and thereby, for an effective exercise of the power. Accord, *Commissioner v. Cardeza's Estate*, 173 F.2d 19 (3rd Cir. 1949); 5 *Page on Wills* §45.23 (4th ed. 1962); See, 5 A.W. Scott, *The Law of Trusts*, §427 (3rd ed. 1967).

Application of the foregoing to the instant facts requires the Court to conclude that the exercise of the special power of appointment was ineffective, leaving ownership of the assets with the donor. Thus, it is the donor's intent which will guide distribution of the assets and not that of the donee. The donor's intent is clearly evidenced by the gift-over provision which requires distribution of the assets to Trust No. 4118 in the event of default of appointment. Accordingly, the Court finds that the assets disclaimed by Alcoholics Anonymous are to be distributed pursuant to that provision.

In light of the foregoing determination, the Court need not reach the issues of the validity of the California judgment and the applicability of the doctrine of *cy pres*.

#### JUDGMENT ENTRY

It is therefore ORDERED, ADJUDGED and DECREED that the motion for summary judgment of defendant Toledo

Trust, as Trustee of Trust No. 4118, is found to be well-taken and is hereby granted.

It is further ORDERED that the assets disclaimed by Alcoholics Anonymous are to be distributed to Trust No. 4118 in accord with provision 3(b)(1) of Trust No. 4117.

It is further ORDERED that the motion for summary judgment of defendant Santa Barbara Foundation is found to be not well-taken and is hereby denied.

*/s/ GEORGE M. GLASSER  
Judge*

**ORDER OF THE COURT OF COMMON PLEAS OF  
LUCAS COUNTY, OHIO ENFORCING MANDATE**

(Filed November 19, 1987)

Case No. 83-2699

**IN THE COURT OF COMMON PLEAS  
LUCAS COUNTY, OHIO**

**THE TOLEDO TRUST COMPANY, AS TRUSTEE OF  
TRUST NO. 4117,**

*Plaintiff,*

**vs.**

**SANTA BARABARA FOUNDATION, *et al.*,  
*Defendants.***

**ORDER**

In accordance with the Mandate entered by the Supreme Court of Ohio on August 26, 1987,

IT IS ORDERED that plaintiff The Toledo Trust Company, as Trustee of Trust No. 4117, after first taking all actions required by law including the payment of legal and other expenses, shall distribute to defendant Santa Barbara Foundation those assets held in Trust No. 4117 appointed to and declined by Alcoholics Anonymous, to be held by Santa Barbara Foundation and administered as a charitable trust in accordance with the final judgment and order *In The Matter of the Estate of Marcia MacDonald Rivas, a/k/a Marcia MacDonald, deceased*, Case No. SM38985, entered by the Superior Court of the State of California, County of Santa Barbara, on October 13, 1983, and

A31

It is further ORDERED that the Motion for Allowance of Costs of Litigation, Including Counsel Fees filed on behalf of defendant The Toledo Trust Company, as Trustee of Trust No. 4118 be denied.

It is further ORDERED that defendant Santa Barbara Foundation recover its costs expended herein.

/s/ **FREDERICK H. McDONALD**  
*Judge*

**JUDGMENT ENTRY OF THE SUPREME COURT  
OF OHIO**

(Dated August 26, 1987)

Case No. 86-1064

**THE SUPREME COURT OF OHIO  
COLUMBUS**

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TOLEDO TRUST COMPANY, TRUSTEE OF  
TRUST NO. 4117,  
*Appellee,*

v.

SANTA BARBARA FOUNDATION *et al.*,  
*Appellants.*

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**APPEAL FROM THE COURT OF APPEALS**

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**JUDGMENT ENTRY**

This cause, here on appeal from the Court of Appeals for Lucas County, was considered in the manner prescribed by law. On consideration thereof, the judgment of the Court of Appeals is reversed and the cause is remanded to the trial court for further proceedings consistent with the opinion rendered herein.

It is further ordered that the appellants recover from the appellee their costs herein expended; and that a mandate be sent to the Court of Common Pleas for Lucas County to carry this judgment into execution; and that a copy of this entry be certified to the Clerk of the Court of Appeals for Lucas County for entry.

/s/ THOMAS J. MOYER  
*Chief Justice*

**MANDATE OF THE SUPREME COURT OF OHIO**

(Filed August 26, 1987)

Case No. 86-1064

**THE SUPREME COURT OF OHIO  
COLUMBUS**

---

TOLEDO TRUST COMPANY, TRUSTEE OF  
TRUST NO. 4117,  
*Appellee,*

v.

SANTA BARBARA FOUNDATION *et al.*,  
*Appellants.*

---

**MANDATE**

To the Honorable Court of Common Pleas  
Within and for the County of Lucas, Ohio.

The Supreme Court of Ohio commands you to proceed without delay to carry the following judgment in this cause into execution:

Judgment of the Court of Appeals is reversed and the cause is remanded to the trial court for further proceedings consistent with the opinion rendered herein.

**COSTS:**

Motion Fee, \$20.00, paid by B. Thomas Handwork, Jr.

/s/ **THOMAS J. MOYER**  
*Chief Justice*

**ENTRY OF THE SUPREME COURT OF OHIO  
DENYING REHEARING**

(Dated October 7, 1987)

Case No. 86-1064

THE SUPREME COURT OF OHIO  
COLUMBUS

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TOLEDO TRUST COMPANY, TRUST NUMBER 4117,  
*Appellee,*

v.

SANTA BARBARA FOUNDATION, *et al.*,  
*Appellants.*

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**REHEARING ENTRY**

IT IS ORDERED by the Court that rehearing in this case be, and the same is hereby, denied.

*/s/ THOMAS J. MOYER*  
*Chief Justice*

**COMPLAINT FILED IN THE COURT OF COMMON  
PLEAS OF LUCAS COUNTY, OHIO**

(Filed November 3, 1983)

No. 83-2699

**IN THE COURT OF COMMON PLEAS  
OF LUCAS COUNTY, OHIO**

**THE TOLEDO TRUST COMPANY, AS TRUSTEE  
OF TRUST NO. 4117**

Three SeaGate  
Toledo, Ohio 43603  
*Plaintiff*

v.

**SANTA BARBARA FOUNDATION  
Santa Barbara, California**

**ALCOHOLICS ANONYMOUS  
CENTRAL OFFICE  
1216 State Street  
Santa Barbara, California 93101**

**HON. ANTHONY J. CELEBREEZE, JR.  
Attorney General, State of Ohio  
30 E. Broad Street  
Columbus, Ohio 43215**

**THE TOLEDO TRUST COMPANY, AS  
TRUSTEE OF TRUST NO. 4118**

Three SeaGate  
Toledo, Ohio 43603; and

**NANCY S. JONES  
1565 Meadow View Lane  
Reno, Nevada 89509  
*Defendants.***

COMPLAINT

Donald F. Melhorn, Jr. (5895)  
Marshall & Melhorn  
1400 National Bank Building  
Toledo, Ohio 43604  
(419) 243-4200  
Attorney for Plaintiff

1. Plaintiff The Toledo Trust Company, an Ohio banking corporation authorized to exercise trust powers, is Trustee of a trust carried on its records as Trust No. 4117, established by written Trust Agreement dated January 28, 1960 between defendant Nancy S. Jones as Donor and plaintiff as such Trustee, a copy of which Trust Agreement is here attached as Exhibit A. The situs of said Trust and the locus of its administration are at plaintiff's office in Toledo, Lucas County, Ohio.

\* \* \* \* \*

5. In its separate and distinct capacity as defendant herein, The Toledo Trust Company is Trustee of another and different trust, carried on its records as Trust No. 4118.

\* \* \* \* \*

10. On September 16, 1983 defendant Santa Barbara Foundation filed in the Superior Court of the State of California, County of Santa Barbara, a "Petition for Determination of Entitlement to Distribution of Estate." In said Petition, docketed under No. SM 38985 of the records of said Superior Court, defendant Santa Barbara Foundation alleged that defendant Alcoholics Anonymous, Central Office, had declined as aforesaid, and prayed that said Superior Court determine who is entitled to assets of Trust

No. 4117 which, but for said declination, would have passed to said defendant Alcoholics Anonymous, Central Office, pursuant to the aforesaid terms of paragraph (I), Article SIXTH of the Will of Marcia MacDonald Rivas. Plaintiff made no appearance in the aforesaid Superior Court in response to said "Petition," or in any proceedings held in respect thereto.

\* \* \* \* \*

**ANSWER OF SANTA BARBARA FOUNDATION  
FILED IN THE COURT OF COMMON PLEAS  
OF LUCAS COUNTY, OHIO**

No. 83-2699

**IN THE COURT OF COMMON PLEAS  
OF LUCAS COUNTY, OHIO**

**THE TOLEDO TRUST COMPANY, AS  
TRUSTEE OF TRUST NO. 4117**

Three SeaGate  
Toledo, Ohio 43603  
*Plaintiff,*

vs.

**SANTA BARBARA FOUNDATION  
Santa Barbara, California**

**ALCOHOLICS ANONYMOUS  
CENTRAL OFFICE  
1216 State Street  
Santa Barbara, California 93101**

**HON. ANTHONY J. CELEBREEZE, JR.  
Attorney General, State of Ohio  
30 E. Broad Street  
Columbus, Ohio 43215**

**THE TOLEDO TRUST COMPANY, AS  
TRUSTEE OF TRUST NO. 4118**

Three SeaGate  
Toledo, Ohio 43603; and  
**NANCY S. JONES  
1516 Meadow View Lane  
Reno, Nevada 89509  
*Defendants.***

SANTA BARBARA FOUNDATION,  
Santa Barbara, California,  
*Cross-Complainant,*

vs.

THE TOLEDO TRUST COMPANY, AS  
TRUSTEE OF TRUST NO. 4118  
Three SeaGate  
Toledo, Ohio 43603

THE TOLEDO TRUST COMPANY, AS  
TRUSTEE OF TRUST NO. 4117  
Three SeaGate  
Toledo, Ohio 43603

ALCOHOLICS ANONYMOUS  
CENTRAL OFFICE  
1216 State Street  
Santa Barbara, California 93101

HON. ANTHONY J. CELEBREEZE, JR.  
Attorney General, State of Ohio  
30 E. Broad Street  
Columbus, Ohio 43215

NANCY S. JONES  
1516 Meadow View Lane  
Reno, Nevada 89509  
*Cross-Defendants.*

---

ANSWER TO COMPLAINT AND CROSS COMPLAINT

Robert L. Bletcher, Esq.  
8 E. Fiqueroa St., Ste. 210  
Santa Barbara, CA 93101  
(805) 965-1016  
Attorney for Defendant,  
Santa Barbara Foundation

---

COMES NOW DEFENDANT, SANTA BARBARA FOUNDATION, and answers the Complaint herein as follows:

1. Defendant, SANTA BARBARA FOUNDATION, admits allegations 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 of Plaintiff's Complaint.

\* \* \* \* \*

**ANSWER OF TRUST NO. 4118 FILED IN THE  
COURT OF COMMON PLEAS OF LUCAS  
COUNTY, OHIO**

Case No. 83-2699

IN THE COURT OF COMMON PLEAS  
OF LUCAS COUNTY, OHIO

---

THE TOLEDO TRUST COMPANY, AS  
TRUSTEE OF TRUST NO. 4117

*Plaintiff*

v.

SANTA BARBARA FOUNDATION, *et al.*  
*Defendants.*

---

ANSWER OF THE TOLEDO TRUST COMPANY, AS  
TRUSTEE OF TRUST NO. 4118 and OF DEFENDANT  
NANCY S. JONES

and

COUNTERCLAIM and CROSS-CLAIM OF DEFENDANT  
THE TOLEDO TRUST COMPANY, AS TRUSTEE  
OF TRUST NO. 4118

James J. Robison (7434)  
Robison, Curphey & O'Connell  
425 L-O-F Building  
Toledo, Ohio 43624  
(419) 255-3100  
Attorney for Defendants Nancy S.  
Jones and The Toledo Trust Com-  
pany, as Trustee of Trust No. 4118.

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Defendant The Toledo Trust Company, as Trustee of Trust No. 4118 ("Defendant Trustee"), and Defendant Nancy S. Jones:

1. Admit the allegations of paragraphs 1 through 12 of the Complaint.

\* \* \* \* \*

**STIPULATIONS AND ATTACHED EXHIBITS FILED  
IN THE COURT OF COMMON PLEAS OF LUCAS  
COUNTY, OHIO**

(Dated April 24, 1985)

No. 83-2699

IN THE COURT OF COMMON PLEAS  
OF LUCAS COUNTY, OHIO

---

THE TOLEDO TRUST COMPANY, AS TRUSTEE  
OF TRUST NO. 4117,  
*Plaintiff,*

v.

SANTA BARBARA FOUNDATION, *et al.*,  
*Defendants.*

---

**STIPULATIONS**

Plaintiff The Toledo Trust Company as Trustee of Trust No. 4117 and defendants Santa Barbara Foundation, The Toledo Trust Company as Trustee of Trust No. 4118 and Nancy S. Jones, by and through counsel, do hereby stipulate to the facts set forth below. Where the Defendants could not agree on language to be included in the Stipulations below, Defendant Santa Barbara Foundation's suggested phrasing is enclosed in parentheses ( ) and Defendants The Toledo Trust Company as Trustee of Trust No. 4118 and Nancy Jones' suggested phrasing is enclosed in brackets [ ].

1. On January 28, 1960, Nancy S. Jones, as Donor, entered into a written Trust Agreement with The Toledo Trust Company, as Trustee, carried on its records as Trust

No. 4117. The primary beneficiary of said Trust Agreement is Donor's daughter, Marcia McDonald Rivas, who was granted a testamentary special power of appointment over the corpus of the trust. A copy of the Trust Agreement, attached hereto and identified as Exhibit A, is a true, accurate and genuine copy of said Trust Agreement.

2. The said Trust Agreement was entered into in Ohio, which is also the situs of the trust assets and administration of the trust.

3. Marcia McDonald Rivas died on November 10, 1982 a resident of Santa Barbara, California.

4. Marcia McDonald Rivas left a Last Will and Testament dated March 14, 1980 which Will was admitted to probate in the Superior Court of the State of California, County of Santa Barbara, on August 1, 1983. A copy of the Last Will and Testament of Marcia McDonald Rivas, attached hereto and identified as Exhibit B, is a true, accurate and genuine copy of said Will.

5. Alcoholic Anonymous, 1216 State Street, Santa Barbara, California, previously located at 1129 State Street, Santa Barbara, California, has declined to accept (a bequest) [the appointment] of 10% of the trust corpus as provided in the Last Will and Testament of Marcia McDonald Rivas in excess of the sum of \$500.00. A copy of Alcoholics Anonymous' Declaration of Declination of Bequest and Appointive Assets, attached hereto and identified as Exhibit C, is a true, accurate and genuine copy of said Declination.

6. On September 16, 1983 Santa Barbara Foundation of California filed a Petition for Determination of Entitlement to Distribution of Estate in the Superior Court of the State of California, County of Santa Barbara, Case

No. SM38985. A copy of the Petition for Determination of Entitlement to Distribution of Estate, attached hereto and identified as Exhibit D, is a true, accurate and genuine copy of said Petition.

7. Toledo Trust Company, attn: Gerald W. Miller (was served with) [received] notice of the time and place of hearing on the Petition for Determination of Entitlement to Distribution of Estate. A copy of the Notice of Hearing and Proof of Service by Mail, attached hereto and collectively identified as Exhibit E, is a true, accurate and genuine copy of said Notice of Hearing and Proof of Service by Mail.

8. On October 13, 1983 the Superior Court of the State of California, County of Santa Barbara, made and Entered an Order Determining Entitlement to Distribution of Estate directing that 10% of the assets of the trust over which Marcia McDonald Rivas had a testamentary special power of appointment be distributed to Santa Barbara Foundation to be held and administered as a charitable trust. A copy of the Order determining Entitlement to Distribution of Estate, attached hereto and identified as Exhibit F, is a true, accurate and genuine copy of said Order.

9. Santa Barbara Foundation is a non-profit corporation incorporated in the State of California on September 19, 1928, organized solely for general charitable and eleemosynary purposes. A copy of the Articles of Incorporation of Santa Barbara Foundation, together with an Amendment thereto, attached hereto and collectively identified as Exhibit G, is a true, accurate and genuine copy of said Articles.

10. After obtaining the California Order, Santa Barbara Foundation (applied to The Toledo Trust Company

as Trustee of Trust No. 4117 for payment of the funds allocable to Alcoholics Anonymous, pursuant to) [gave notice to The Toledo Trust Company as Trustee of Trust No. 4117 of the entry of] the Order Determining Entitlement to Distribution of Estate.

11. The Toledo Trust Company as Trustee of Trust No. 4117 has not paid to Santa Barbara Foundation the funds allocable to Alcoholics Anonymous as directed by the Order Determining Entitlement to Distribution of Estate and continues to hold said funds pending receipt of the advice and instruction of this Court.

/s/ DONALD F. MELHORN, JR.

*An Attorney for Plaintiff The  
Toledo Trust Company as Trustee  
of Trust No. 4117*

/s/ JOHN M. CAREY

*An Attorney for Defendant Santa  
Barbara Foundation*

/s/ JAMES J. ROBISON

*An Attorney for Defendants Nancy  
S. Jones and The Toledo Trust  
Company as Trustee of Trust  
No. 4118*

#### CERTIFICATE OF SERVICE

I hereby certify that a copy of these Stipulations have been served upon Donald F. Melhorn, Jr., Esq., 4 SeaGate, 8th Floor, Toledo, Ohio 43604, Attorney for Plaintiff The Toledo Trust Company as Trustee of Trust No. 4117; Robert L. Bletcher, Esq., 8 East Figueroa Street, Suite 210, Santa Barbara, California 93101, Attorney for Defendant Santa Barbara Foundation; Defendant, Alco-

holics Anonymous, Central Office, 1216 State Street, Santa Barbara, California 93101; Janice M. Wood, Assistant Attorney General, State of Ohio, 30 East Broad Street, Columbus, Ohio 43215; and James J. Robison, Esq., 4 SeaGate, 9th Floor, Toledo, Ohio 43604, Attorney for Defendants Nancy S. Jones and The Toledo Trust Company as Trustee of Trust No. 4118, by ordinary U. S. Mail this 24th day of April, 1985.

JOHN M. CAREY

**Exhibit A**

**TRUST NO. 4117**  
**TRUST AGREEMENT**

AGREEMENT entered into on the 28th day of January, 1960 between NANCY S. JONES (hereinafter called the "Donor"), and THE TOLEDO TRUST COMPANY (hereinafter called the "Trustee").

The Donor has assigned, transferred, conveyed and delivered and does hereby assign, transfer, convey and deliver to the Trustee the property described in Schedule "A" attached hereto and made a part hereof, which together with such other property as may hereafter be added to the trusts hereunder as hereinafter provided in Article I, shall be held by the Trustee in trust for the uses and purposes herein set forth.

**ARTICLE I**  
**ADDITIONS TO THE TRUST**

The Donor or any other person or persons (either before or after the death of the Donor) may at any time and from time to time increase or add to the trust assets by gifts, devises, bequests, conveyances, transfers, assignments or deliveries of property, real or personal, to the Trustee to be held in trust ~~for~~ the uses and purposes herein set forth, and the Trustee is authorized and empowered to accept and receive such property and to hold the same in trust for the uses and purposes herein set forth.

**ARTICLE II**  
**BENEFICIARIES**

The primary beneficiary of this trust is the Donor's daughter, Marcia. Income and principal shall be distributed as follows:

(1) During the life of the Donor's said daughter, the Trustee may, from time to time, in its discretion, pay to her or to any one or more among her issue such part of the income and/or principal as it deems necessary, advisable or expedient for the care, comfort, support, best interest or general welfare of Donor's daughter, or for the care, comfort, support, education, best interest or general welfare of any one or more of her issue. Such payments may be made to or for the benefit of any one or more to the exclusion of the other or others among said beneficiary, and her issue, if any, and without obligation to make equal payments to any of the others then or thereafter. Income not so paid shall be accumulated and added to principal. If at any time all of the then existing principal is distributed by the Trustee, this trust shall terminate.

(2) Upon the death of the Donor's said daughter, the then existing principal shall be distributed to such one or more among her issue, spouses (including widows and widowers) of such issue, sister, sister's issue, and any institutions or associations organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, in such shares or proportions and upon such terms, conditions and estates in trust or otherwise, as the Donor's said daughter may by her Last Will and Testament appoint, provided that her said Will shall expressly refer to her power of appointment hereunder,

and provided further that such power of appointment shall not be exercisable in favor of the Donor's said daughter, her estate, her creditors or the creditors of her estate.

(3) To the extent the Donor's daughter fails effectively to exercise the power of appointment granted to her in the preceding paragraph (2), at the time of her death the then existing principal (including accumulated income) shall be held or distributed as follows:

(a) If the Donor's daughter leaves issue living at the time of her death, such principal shall vest per stirpes in and, subject to the provisions of paragraph (4) hereof, be distributed to such of her issue as are living at that time;

(b) If said daughter leaves no issue living at the time of her death, then such principal shall be distributed as follows:

(i) If the Donor's daughter, Roberta, is living at that time, it shall be added to and become a part of the trust created simultaneously herewith for the benefit of the Donor's daughter, Roberta, with the Toledo Trust Company as Trustee and designated on the Trustee's records as Trust No. 4118 and shall be administered and distributed in accordance with the provisions thereof; or, if she has died prior thereto leaving issue living at that time, then it shall vest per stirpes in and, subject to the provisions of paragraph (4) hereof, be distributed to such of her issue as are living at that time;

(ii) If the Donor's daughter, Roberta, has died prior thereto leaving no issue living at that

time, then subject to the provisions of paragraph (4) hereof, it shall be distributed in equal shares to such of the children of the Donor's brothers and sisters (including half-brothers and sisters and step-brothers and sisters) as are living at that time, except that if any such child has died prior thereto leaving issue living at that time, the share to which such deceased child would have been entitled if living shall vest per stirpes in and be distributed to such of the deceased child's issue as are living at that time.

(4) If any share or part of principal becomes distributable to any beneficiary who has not attained the age of twenty-one (21), the Trustee shall have full power and authority, in its sole discretion, to retain such part or share until such beneficiary shall attain said age. This power of retention shall operate as a power only and shall not operate to prevent the vesting of any interest or to suspend the ownership thereof. With respect to the administration of any such share or part during the period of retention, the Trustee shall have full power and authority to exercise all of the rights, powers and discretions of management and administration of trust assets herein conferred upon it and to pay to such beneficiary or apply to his or her use such part of the income and/or principal of his or her share or part as it may deem necessary, advisable or expedient for the care, comfort, support and education of such beneficiary. Any income not so paid or applied shall be accumulated and added to the principal of the share or part from which derived. If such beneficiary dies before attaining the age of twenty-one (21), the share or part so retained shall be delivered and paid over to the estate of such beneficiary.

(5) Whenever income and/or principal is to be distributed, paid to or applied to the use of any beneficiary under the age of twenty-one (21), such payment or distribution may be made for the benefit of such minor to either or both of such minor's parents or guardian or to the person with whom such minor is living or may be applied to the use of such minor by the Trustee by expending it for his or her benefit.

(6) The terms "child," "children," "issue," and any similar term or terms as used herein, shall include any adopted child or children and any such adopted child or children and the issue thereof shall be entitled to share hereunder in the same manner as if born in lawful wedlock to the adopting parent or parents.

### ARTICLE III

#### PROHIBITION AGAINST ALIENATION

(1) No beneficiary shall have the right to transfer all or part of his interest either in income or principal unless the Trustee, in its discretion (which it shall not be compelled to exercise), shall consent in writing thereto; nor shall any person having a claim or demand of any sort against a beneficiary have the right, while the Trustee has possession of any trust property, to reach the interest of any beneficiary therein by judicial process.

(2) If any beneficiary, without first obtaining the Trustee's written consent (which the Trustee shall not be compelled to give), shall attempt at any time or times to transfer all or any part of his interest in the income or principal, or, if any person having a claim or demand

of any sort against any beneficiary attempts at any time or times to reach the interest of such beneficiary by judicial process for the purpose of having all or any part of such interest applied or paid over, or impressed with a charge or lien in complete or partial satisfaction of such claim or demand, then in any such event, from that time forward and until (as the case may be) the attempted transfer is cancelled and revoked or the claim or demand is finally settled and disposed of, the right of the beneficiary to demand either income or principal, or both, to which he would otherwise be entitled, shall cease; and during such time, the income, or principal, or both, to which the beneficiary would otherwise be entitled, shall be held or distributed in any one or more of the following ways:

- (a) All or any part of such income may be accumulated; or
- (b) All or any part of such income, accumulated income and principal may, from time to time, be paid to or applied to the use of all or any one or more exclusively of the other or others among such beneficiary, such beneficiary's spouse, if any, and such beneficiary's issue, if any; or, if there is no such spouse or issue, then among such beneficiary and the person who would, if such beneficiary were actually dead, be entitled to such income, accumulated income, or principal, as the case may be;

as the Trustee, in its absolute and uncontrolled discretion (which it shall not be compelled to exercise and for the exercise of which it shall not be liable to account) thinks fit. If such beneficiary dies during the time when the Trustee is holding in trust any property subject to

the provisions of this paragraph, any accumulated or undistributed income shall thereupon be added to the principal thereof, and such property shall thereafter be held and distributed as hereinbefore provided; and if no provision has been made for the disposition of such property after such beneficiary shall have attained any specified age and such beneficiary had in fact attained such age at the time of death, the age of such beneficiary at the time of death shall, for the purpose hereof, be deemed to be less than the specified age. The foregoing provisions of this paragraph shall in all events be subject to the limitation that, if the Trustee is holding in trust any property subject thereto on the day preceding the expiration of a period of twenty-one (21) years after the death of the survivor of all beneficiaries of any trust hereunder who are in being at the time of the creation of the interests hereunder, then the trust shall terminate on said day, and any then existing principal and undistributed income shall vest in and be distributed to the beneficiary or beneficiaries who, without regard to the provisions of this paragraph, are entitled thereto upon termination.

(3) If any provision of this Article or the application thereof to any person, interest or circumstance is held invalid, the remainder of the Article and the application of such provision to other persons, interests or circumstances shall not be affected thereby.

## ARTICLE IV

### ADVISORY COMMITTEE

There is hereby established hereunder an Advisory Committee which shall consist of R. A. Stranahan, Jr., W. A. Belt and S. J. Balog, and their successors, chosen as herein provided, and which shall have the rights and

powers herein set forth. Such rights and powers shall be held by the Advisory Committee in a fiduciary capacity and shall be exercised by them for the benefit of the beneficiaries and others interested in the trust in all respects as though the same were exercised by trustees hereunder, and not for the benefit of any other person or persons.

(1) The Trustee of each of the trusts created herein shall exercise its powers of sale, investment, reinvestment, borrowing and voting of shares or other securities in accordance with the written directions of the Advisory Committee. The Committee by unanimous consent of its members shall have the right and power to remove the Trustee of any trust and appoint a successor or successors as hereinafter set forth. The written consent or ratification of the Advisory Committee shall have the same force and effect as a written direction. The Trustee shall not be liable for nor charged with any act or thing done or omitted to be done in good faith and upon the direction or with the consent or ratification of the Advisory Committee. If in any case of emergency it is either impossible or impracticable or inexpedient to obtain the direction of such Committee, then the Trustee may, until the passing of such emergency, exercise said powers without the direction, consent or ratification of said Committee.

(2) Except where unanimous consent is otherwise expressly required herein, the Committee shall act by consent of a majority of the members. If at any time there is an equal division of opinion between the members, the Trustee shall determine the matter in question. Any one or more of the members may, from time to time, but not permanently, delegate the rights and powers conferred upon such member or members to any other

person or persons. No member of the Advisory Committee shall be liable for any act or thing done or omitted to be done in good faith nor for any error or mistake of judgment.

(3) Any member may resign by giving written notice to the other members of the Committee, if any, and to the Trustee. Upon the death, resignation, incapacity or refusal to serve of any member, a successor may be appointed by the remaining members of the Committee to the end that there shall always be at least two and not more than three members of the Committee. Any successor member shall have the same rights and powers as though originally designated herein.

(4) At any time the Advisory Committee may terminate its existence by unanimous consent of its members. Upon such termination, all of the rights, powers and discretions of the Committee shall forthwith vest in and thereafter be exercised by the Trustee as fully and effectually as if originally conferred upon the Trustee solely.

(5) The fiduciary powers herein conferred upon the Advisory Committee shall be held to be naked powers and shall not vest any member or members thereof with any right, title or interest in or to any of the trust assets, and the Trustee shall have the sole power and authority to execute, acknowledge and deliver all deeds, leases, conveyances, assignments, bills of sale, receipts, proxies, transfers, agreements or other instruments affecting the trust assets, including any court applications or accounts and none of the members of said Committee shall be permitted or required to join therein. No person, firm or corporation dealing with the Trustee shall be privileged or obligated to inquire into the authority of the Trustee or of the

said Committee, or into the fact whether any act or transaction shall have been directed, consented to or ratified by such Committee. No bond or other security shall be required of any member of the Advisory Committee.

## ARTICLE V

### POWERS AND DUTIES OF THE TRUSTEE

Pursuant to the directions or with the consent of the Advisory Committee as hereinbefore provided, the Trustee shall have full power and authority, with respect to each separate trust, to control and manage the trust assets, to collect, recover and receive the rents, issues, interest, income and proceeds therefrom and to do all acts and things which it deems either necessary, advisable or expedient to the same extent and with like effect as might be done by an individual in absolute ownership and control of said property, including (without prejudice to the generality of such powers) the following powers:

(a) The Trustee, without liability for depreciation or loss thereof, may hold and retain any real or personal property in the same form of investment as that in which it was received hereunder, although such property may not be of the character of investment permitted by law to trustees, and regardless of the fact that the holding or retention thereof may be unwise, imprudent or hazardous or that such property may be non-productive and regardless of the proportion which any such property, or property of a similar character, so held, may bear to the entire amount of the trust estate.

(b) The Trustee may sell, convey, exchange, mortgage, pledge, option, lease for any term of years

irrespective of the period of any trust hereunder and with or without privilege or option to purchase (including 99-year leases renewable forever), renew, extend, continue or modify any such transaction or otherwise deal in and dispose of all or any part of the trust assets without order of court, at public or private sale, for cash or on credit, for such consideration, and on such terms and conditions as the Trustee, in its discretion, may deem either necessary, advisable or expedient. The Trustee shall have the right and power, at any time and from time to time, to purchase from, sell to, and otherwise deal with itself in its capacity as fiduciary of any other trust in which any member of the Donor's family has a beneficial interest, to the same extent as it is herein authorized to purchase from, sell to and deal with third parties.

(c) The Trustee is authorized and empowered to borrow money from itself or from any other person or persons or to create, incur or assume debts or obligations for any purpose or purposes it may, in its discretion, deem either necessary, advisable or expedient including, but not limited to, that of paying or applying income and/or principal to any beneficiary or beneficiaries when cash is not available or saving, protecting, preserving, repairing or improving any trust asset, paying debts, claims, obligations, taxes, assessments or other governmental charges, or any and all other costs, charges or expenses incurred in the management and administration of the trusts or acquiring or purchasing investments, and to secure the payment therefor by mortgaging, pledging, hypothecating or otherwise encumbering all or any part of the income and/or principal then held or there-

after acquired, executing negotiable or non-negotiable notes, purchase-money mortgages, assuming debts or obligations of others, or otherwise; the Trustee may advance or loan money to any person or persons, or deposit the same in any bank or trust company, for any purpose and for any length of time it deems either necessary, advisable or expedient with or without security.

The Trustee may advance or loan money to any trust and shall have a first and prior lien upon all of the income and principal of such trust with the right to fully repay and reimburse itself out of either or both income and principal, and in addition thereto, the Trustee shall be entitled to specific security by way of a mortgage or pledge of particular parts of the income and/or principal in such trust for all sums so loaned or advanced. The Trustee shall be entitled to receive a legal rate of interest on any money so advanced or loaned.

(d) The Trustee shall have full power and authority to execute, acknowledge and deliver all deeds, conveyances, bills of sale, assignments, receipts, powers of attorney, proxies, contracts, notes, mortgages, leases, options, transfers and other instruments which it, in its discretion, deems either necessary, advisable or expedient.

(e) The Trustee may change and alter investments and invest and reinvest the trust funds in such real or personal property of any kind or description as the Trustee may deem either necessary, advisable or expedient. The Trustee shall not be restricted to investments or reinvestments of the character permitted for trustees' investments by the rules or orders

of court or the statutes of the State of Ohio or of any other state, but shall be relieved from all restrictions placed by law on investments which may be made by trustees. The Trustee shall not be held to account or liable for, nor charged with, any loss due to alterations, changes, investments or reinvestments made or omitted to be made pursuant to the directions of the Advisory Committee, or, if acting in its sole discretion, made or omitted to be made in good faith and with due care.

(f) With respect to any shares of stock or bonds or other securities held by it, the Trustee is authorized and empowered, in its discretion, to vote thereon in person or by proxy (to whom discretion may be granted); to consent in writing and join in any voting trust, pooling or depository agreement with respect thereto; to exercise any right of option, subscription, conversion or otherwise attaching to or which may be given to the holders thereof; to join in any plan of lease, mortgage, consolidation, exchange, reorganization or foreclosure of any corporation issuing the same and take and hold any security issued under any such plan, pay assessments involved therein or invest additional funds therein; and to exercise all other rights in connection therewith as fully as if such Trustee were the unqualified owner thereof.

(g) The Trustee shall not be required to register or hold any real or personal property, including without limiting the generality of the foregoing, stocks, bonds or other securities or other investments or instruments appertaining thereto, in its name individually or as Trustee, but may register, hold or retain such property and/or instruments in the name of an

individual, partnership or corporation as its nominee or may keep them unregistered any may retain them or any part thereof in such condition that they may pass by delivery.

(h) The Trustee may, in its discretion, allocate all or any part of the receipts, actual or constructive, including but not limited to rents, capital gain, interest or dividends in cash, stock or property, to income or to principal, or to both and may, in its discretion, charge all or any part of the current or other expenses, disbursements, losses, premiums and discounts, to income or to principal or to both.

(i) The Trustee shall be under no obligation to create a sinking fund or make any amortization charge from income or otherwise to make good to principal any loss on securities received at a valuation above par, or purchased by it above par, when from falling due of said securities or otherwise, the premium is lost in whole or in part.

(j) Whenever it shall become necessary to divide any assets into parts or shares or to distribute the same, the Trustee may, but shall not be required to, reduce all or any part thereof to cash or other divisible form, and may make such division or distribution in cash or in kind, or partly in cash or partly in kind (as may be determined by the Trustee), and for the purpose of each division or distribution, the judgment of the Trustee concerning the property thereof, and the relative value for the purpose of division or distribution of the property and security so divided or distributed shall be binding and conclusive on all persons interested therein.

(k) The Trustee shall have full power and authority to sue for, settle, collect and compound, sell or abandon claims or demands belonging to any of the trusts, to accept any consideration, compensation or security for any debts and to allow such time for payment (either with or without taking any security), and to defend, settle, adjust, compromise, pay or discharge any claim of whatever kind which may be made against any of the trusts, upon such terms and conditions and in such manner, as to the Trustee, in its discretion, may seem either necessary, advisable or expedient.

(l) The Trustee may, in its discretion, pay all taxes, assessments or governmental charges of any nature whatsoever, which shall become payable in respect of all or any part of the income or principal held in any of the trusts hereunder at any time and from time to time, or which shall become payable in respect to all or any part of the income and/or principal of any of the trusts which is accumulated, or paid to, or applied to the use of or distributed to any beneficiary or beneficiaries.

The Trustee, in its discretion, may contest any tax, assessment or governmental charge and may pay the costs and expense of such contest including interest and penalties if any are charged out of the income and/or principal and without liability on its part notwithstanding it may be held that the Trustee contested any such tax, assessment or governmental charge without reasonable cause. The Trustee shall not be liable to any beneficiary for its failure or omission to pay any taxes, assessments or governmental charges of any nature.

(m) The Trustee may in the discharge of its duties employ and compensate counsel, agents or other representatives. The Trustee shall not be answerable for the default or misconduct of any counsel, agent or other representative selected by it in good faith.

(n) The Trustee shall keep adequate books of account in which shall be entered a description of all property from time to time constituting the trust assets and an account of all receipts and disbursements hereunder, which books of account shall at all times be open to the inspection and examination of the Advisory Committee, beneficiaries and guardians of any minor beneficiaries, at least annually, and as often as may reasonably be requested, during the life of the trust hereby created, an accurate statement showing the property constituting the trust assets and the income thereof, and showing all receipts and disbursements.

The Trustee shall not be required to file any account in or report to any court under or pursuant to any statute now in force or hereafter enacted, nor shall the Trustee be required to account or report otherwise than as herein provided or as required by the orders and decrees of a court of competent jurisdiction.

(o) No purchaser, mortgagee, pledgee or assignee of any part or all of the trust assets, nor any person borrowing from or lending to the Trustee, nor any other person or persons whether or not they are dealing with the Trustee, shall be required or permitted to see to the application of any trust funds. or the

performance of any duty, or be obligated or privileged to inquire into the power or authority of the Trustee or into the necessity, advisability or expediency of any act of the Trustee.

(p) The Trustee shall be entitled to reasonable compensation for its services; and shall be entitled to be indemnified or reimbursed out of principal and/or income for all payments, outlays, costs, charges and expenses, including attorney fees which it incurs or pays or for which it may become personally liable or required to personally pay, because of breach of contract, injury to person or property, fines, penalties or assessments under any law or otherwise, or any other act or thing done or omitted to be done, in good faith.

ARTICLE VI  
THE TRUSTEE

The Trustee and any successor may resign as Trustee by giving thirty (30) days' written notice to the Advisory Committee or, if it is not in existence, to such as are living among the Donor, and Donor's children who have attained the age of twenty-one (21).

The Trustee and any successor may be removed as Trustee of any trust by thirty (30) days' written notice signed by the Advisory Committee.

In the event of the resignation or removal or the refusal or incapacity of the Trustee or any successor to serve as Trustee of any trust, a successor shall be appointed by an instrument in writing signed by the Advisory Committee, or, if it is not in existence, by such

as are living among the Donor, and Donor's children who have attained the age of twenty-one (21), or, if they fail to agree, then by order of a court of competent jurisdiction. Any successor shall be a reputable bank or trust company authorized to conduct a trust business under the laws of any state or of the United States. No successor trustee shall be charged with or held responsible for any act or thing done or omitted by any predecessor.

The powers of resignation, removal and appointment granted herein shall be continuing powers and may be exercised at any time and from time to time. Any successor trustee shall be vested with the same and all the rights, powers, discretions, trusts, duties and obligations of its predecessor with like effect as though originally designated herein.

ARTICLE VII  
APPLICABLE LAW

This agreement and all of the trust assets held in trust hereunder shall be subject to and held, administered and distributed in accordance with the laws of the State of Ohio.

ARTICLE VIII  
IRREVOCABILITY

The Donor relinquishes all right to alter, amend, revoke or terminate this agreement or any of the trusts hereunder.

IN WITNESS WHEREOF, the said Nancy S. Jones has signed this instrument and The Toledo Trust Company

has caused this instrument to be executed by its officers thereunto duly authorized, in duplicate, the day and year first above mentioned.

/s/ **NANCY S. JONES**

Nancy S. Jones

**THE TOLEDO TRUST COMPANY**

By /s/ **STEPHEN BALOG**

Vice President and Trust Officer

Attest: /s/ **FRANCIS G. PLETZ**

Assistant Secretary

Witnesses:

/s/ **GEORGE F. MEDILL**

/s/ [Illegible] **S. CLAUS**

#4117

**SCHEDULE "A"**

10,000 shares Champion Spark Plug Company common stock

Rec'd

/s/ **F. G. Pletz**

**Exhibit B**

SM38985

FILED  
SUPERIOR COURT  
DEC 16 1982

Howard C. Menzel, County Clerk  
By /s/ (Illegible)

Deputy Clerk

**WILL OF  
MARCIA MacDONALD RIVAS**

I, MARCIA MacDONALD RIVAS, a resident of Santa Barbara County, California, declare that this is my Will.

**FIRST:** I revoke all Wills and Codicils that I have previously made.

**SECOND:** I declare that I am married to JUAN RIVAS and all references in this Will to "my husband" are to him. My husband and I are presently separated. I declare that I have no children living or deceased.

**THIRD:** I declare that all property presently standing in my name and all property which shall stand in my name at the time of my death is my separate property. There exists no property which is the community property of myself and my husband. It is my intention by this Will to dispose of all property over which I have the right of testamentary disposition, including any and all property as to which I may have a testamentary power of appointment.

/s/ M. M. D. R.

FOURTH: It is common knowledge that my family was made financially secure, initially, through the generosity of my grandfather, ROBERT ALLEN STRANAHAN. Most of the wealth which has passed to me and my family has multiplied, leaving my mother, NANCY S. JONES, my sister, ROBERTA PAWLAK, my niece, MARCIA UNI, and my nephew, JAMIE PAWLAK, all quite financially secure. Accordingly, except as otherwise specifically provided herein, I have intentionally failed to make provision for them in this Will.

FIFTH: I make the following specific gifts of property:

A. I give my Jaguar automobile to MARCI DE LA TORRE.

B. I give my grandmother's crystal and china to my niece, MARCIA UNI.

C. I give all my animals, including, but not limited to my horses, dogs, cats, and goats, to MARCI DE LA TORRE. I direct that during the period of the administration of my estate, none of my animals shall be destroyed without the approval of a licensed veterinarian. In the event the destruction of any such animal shall be approved by a veterinarian, following destruction the animal shall not be rendered.

D. I give all my jewelry, clothing, household furniture and furnishings, motor vehicles, and other tangible articles of

/s/ M. M. D. R.

a personal nature, or my interest in any such property, not otherwise specifically disposed of by this Will or in any other manner, together with any insurance on the

property, to MARCI DE LA TORRE, LISA DE LA TORRE, and TRINIDAD DE LA TORRE, in equal shares as they shall agree, or as my Executor shall in my Executor's discretion determine if they shall not agree.

SIXTH: Under that certain Trust Agreement entered into January 25, 1960 between my mother, NANCY S. JONES and TOLEDO TRUST COMPANY, I have a special power of appointment. The permissible appointees under this power of appointment are limited to my issue, spouses (including widows and widowers) of such issue, my sister, my sister's issue, and any institutions or associations organized and operated exclusively for religious, charitable, scientific, literary or educational purposes. I exercise this power of appointment by appointing all property subject to this power as follows:

(A) Ten percent (10%) thereof shall be distributed in memory of Dr. Cameron Hall to SAINT JOHN'S HOSPITAL AND HEALTH CENTER, 1328 22nd, Santa Monica, California 90404.

(B) Ten percent (10%) thereof shall be distributed to the MEMORIAL REHABILITATION FOUNDATION, 300 North San Antonio Road, Santa Barbara, California 93110.

/s/ M. M. D. R.

(C) Ten percent (10%) thereof shall be distributed to the CITY OF HOPE, 208 West 8th Street, Los Angeles, California 90014.

(D) Ten percent (10%) thereof shall be distributed to the ARTHRITIS FOUNDATION, 2944 De La Vina Street, Santa Barbara, California 93105.

(E) Ten percent (10%) thereof shall be distributed to LOYOLA MARYMOUNT UNIVERSITY, Loyola Boulevard and West 80th, Los Angeles, California 90045.

(F) Ten percent (10%) thereof shall be distributed to the HEART ASSOCIATION OF SANTA BARBARA COUNTY, 146 East Carrillo Street, Santa Barbara, California 93101.

(G) Ten percent (10%) thereof shall be distributed to the CHILD ABUSE LISTENING MEDIATION, INC. (CALM), P. O. Box 718, Santa Barbara, California 93102.

(H) Ten percent (10%) thereof shall be distributed to the Large Animal Division of the SCHOOL OF VETERINARY MEDICINE, University of California at Davis, California, in memory of Dr. Wheat, who performed admirably every time I called upon him.

(I) Ten percent (10%) thereof shall be distributed to ALCOHOLICS ANONYMOUS, Central Office, 1129 State Street, Santa Barbara, California 93101.

/s/ M. M. D. R.

(J) Five percent (5%) thereof shall be distributed to the MULTIPLE SCLEROSIS SOCIETY, Channel Islands Chapter, 1727 State Street, Santa Barbara, California 93101.

(K) Five percent (5%) thereof shall be distributed to the CRIPPLED CHILDREN AND ADULTS EASTER SEAL SOCIETY OF SANTA BARBARA COUNTY, 31 East Canon Perdido, Santa Barbara, California 93101.

SEVENTH: During the period of the administration of my estate, I direct my executor to pay to MARCI DE LA TORRE the monthly sum of \$2,500.00 to provide for

the care and feeding of my animals. MARCI DE LA TORRE shall render itemized monthly accounts with respect to such expenditures made by her from such funds for such purposes and any excess not expended for the care and feeding of such animals shall be returned to my estate.

EIGHTH: I give the resident of my estate to my husband JUAN RIVAS if he survives me and if he does not, to MARCI DE LA TORRE.

NINTH: Except as otherwise provided in this Will, I have intentionally and with full knowledge omitted to provide for my heirs who may be living at the time of my death.

/s/ M. M. D. R.

TENTH: If any devisee, legatee or legal heir of mine, or person claiming through any of them, shall contest this Will or attack or seek to impair or invalidate any of its provisions, or any provisions in any codicil thereto, I specifically disinherit each such person and all legacies, bequests, devisees, and interests given under this Will or in any other manner to such person shall be forfeited and shall augment proportionately the shares of my estate going to such of my devisees and legatees as shall not have participated in such acts.

ELEVENTH: I direct that all estate and inheritance taxes payable as a result of my death, not limited to taxes assessed on property passing under this Will, shall be paid out of the residue of my estate, and shall not be deducted or collected from any legatee, devisee, or beneficiary hereunder.

TWELFTH: I nominate MARCI DE LA TORRE as Executor of this Will. The term "my Executor" as used in this Will shall include any personal representative of my estate.

I further authorize my Executor to sell, with or without notice, at either public or private sale, and to lease any property belonging to my estate, subject only to such confirmation of court as may be required by law.

/s/ M. M. D. R.

I authorize my Executor to invest and reinvest any surplus moneys in my Executor's hands in any kind of property, real, personal, or mixed, and every kind of investment, specifically including, but not limited to, interest-bearing accounts, corporate obligations of every kind, preferred or common stocks, shares of investment trusts, investment companies, mutual funds, or common trust funds, including funds administered by my Executor and mortgage participations, that persons of prudence, discretion, and intelligence acquire for their own account.

I further authorize my Executor either to continue the operation of any business belonging to my estate for such time and in such manner as my Executor may deem advisable and for the best interests of my estate, or to sell or liquidate the business at such time and on such terms as my Executor may deem advisable and for the best interests of my estate. Any such operation, sale, or liquidation by my Executor, in good faith, shall be at the risk of my estate and without liability on the part of my Executor for any resulting losses.

THIRTEENTH: If any part of this Will is held to be void, invalid, or inoperative, I direct that such voidness,

invalidity, or inoperativeness shall not affect any other part of this Will, and that the remainder of this Will shall be carried into effect

/s/ M. M. D. R.

as though such part had not been contained herein.

FOURTEENTH: As used in this Will, the masculine, feminine, or neuter gender, and the singular or plural number shall each be deemed to include the others whenever the context so indicates.

I subscribe my name to this Will this 14 day of March, 1980, at Santa Barbara, California.

/s/ MARCIA MACDONALD RIVAS  
Marcia MacDonald Rivas

On the date written below, MARCIA MacDONALD RIVAS declared to us, the undersigned, that this instrument, consisting of nine (9) pages including the page signed by us as witnesses, was her Will and requested us to act as witnesses to it. She thereupon signed this Will in our presence, all of us being present at the same time. We now, at her request, in her presence and in the presence of each other, subscribe our names as witnesses.

Executed on February , 1980, at Santa Barbara, California.

We declare under penalty of perjury that the foregoing is true and correct.

/s/ S. J. Brynah, Jr. residing at 3536 Las Pinas Dr.  
Santa Barbara, Ca 93105  
/s/ Patricia Wilson residing at 859 N. Patterson  
Santa Barbara, CA 93104

**Exhibit C**

ROBERT L. BLETCHER  
Attorney at Law  
Eight East Figueroa Street  
Suite 210  
Santa Barbara, California 93101  
Telephone: (805) 965-1016  
Attorney for Claimant

**SUPERIOR COURT OF THE STATE  
OF CALIFORNIA  
COUNTY OF SANTA BARBARA**

In the Matter of the Estate of )  
MARCIA MacDONALD RIVAS, aka ) No. SM38985  
MARCIA MacDONALD, )  
Deceased. )

**DECLARATION OF DECLINATION OF BEQUEST  
AND APPOINTIVE ASSETS**

I, ROBERT E. TABER, on behalf of ALCOHOLICS ANONYMOUS, Twenty Third District Central Steering Committee, 1216 State Street, Santa Barbara, California, previously located at 1129 State Street, Santa Barbara, California, do hereby decline to accept the bequest and appointment of 10% of the assets of that certain trust under Trust Agreement dated January 28, 1960, between NANCY S. JONES, Donor, and the TOLEDO TRUST COMPANY, Trustee, over which MARCIA MacDONALD RIVAS had power of appointment, except the sum of \$500.00.

ALCOHOLICS ANONYMOUS, Santa Barbara, California, has no objection to, nor, in accordance with an ALCOHOLICS ANONYMOUS tradition, can it endorse

the request of SANTA BARBARA FOUNDATION for the distribution of the balance of said assets under said bequest and power of appointment of MARCIA MacDONALD RIVAS for the purposes set forth in its Statement of Interest, and request the Court approve and order the same.

Dated: September 27, 1983.

ALCOHOLICS ANONYMOUS  
Twenty-Third District  
Central Steering Committee  
By: /s/ ROBERT E. TABER  
Robert E. Taber  
Chairman

**Exhibit D**

FILED  
SUPERIOR COURT  
SEP 16 1983

Howard C. Menzel, County Clerk-Recorder  
By /s/ (Illegible)

Deputy Clerk

ROBERT L. BLETCHER

Attorney at Law

Eight East Fiqueroa Street

Suite 210

Santa Barbara, California 93101

Telephone: (805) 965-1016

Attorney for Petitioner

SUPERIOR COURT OF THE STATE  
OF CALIFORNIA  
COUNTY OF SANTA BARBARA

In the Matter of the Estate of )  
MARCIA MacDONALD RIVAS, aka - ) No. SM 38985  
MARCIA MacDONALD, )  
Deceased. )

**PETITION FOR DETERMINATION OF ENTITLEMENT  
TO DISTRIBUTION OF ESTATE**

Petitioner, SANTA BARBARA FOUNDATION, respectfully represents:

1. At all times mentioned herein, Petitioner, SANTA BARBARA FOUNDATION, was, and now is, a corporation duly organized and existing under and by virtue of the non-profit laws of the State of California, having its principal place of business in the County of Santa Barbara, State of California.

2. As more particularly appears from the Articles of Incorporation, Petitioner is incorporated solely for general, charitable eleemosynary purposes. A copy of the Articles of Incorporation of Petitioner is attached hereto, marked Exhibit "A" and made a part hereof.

3. Notice of Death in this matter has been duly published as provided by Law and Letters of Special Administration of the Estate of MARCIA MacDONALD RIVAS, deceased, have been issued to ROBERTA PAWLAK, who at all times herein has been appointed, qualified and acting in such capacity. A Petition for Final Distribution has not been filed herein.

4. The Decedent, MARCIA MacDONALD RIVAS, left estate consisting of real and personal property situated in Santa Barbara County, California.

5. Decedent was the donee of a power of appointment under Trust Agreement dated January 28, 1980, between NANCY S. JONES as Donor and THE TOLEDO TRUST COMPANY as Trustee. Said power of appointment was to be exercised upon the death of said MARCIA MacDONALD RIVAS by her Last Will and Testament, expressly referring to said power of appointment. A copy of said Trust is attached hereto marked Exhibit "B" and made a part hereof.

6. By the terms of the Will of MARCIA MacDONALD RIVAS, dated March 14, 1980, and admitted to probate herein on August 1, 1983, decedent duly exercised said power of appointment by, in part, giving ten percent (10%) of the corpus of the Trust over which she had power of appointment to ALCOHOLICS ANONYMOUS, Central Office, 1129 State Street, Santa Barbara, California 93101.

7. Petitioner is informed and believes and on such information and belief alleges that ALCOHOLICS ANONYMOUS is an association of individuals who, as a unit, have the exclusive charitable and educational purpose of deterring the excessive use of alcohol and aiding, assisting, and benefiting persons suffering from alcoholism and the effects of alcohol abuse.

8. Petitioner is informed and believes and on such information and belief alleges that ALCOHOLICS ANONYMOUS is not a duly constituted organization under the laws of the State of California, and does not qualify under Probate Code §27 as a person or organization capable of taking a testamentary disposition by Will.

9. Petitioner is further informed and believes and on such information and belief alleges that ALCOHOLICS ANONYMOUS is unable to accept the assets appointed to it under the Will of Decedent.

10. Petitioner is informed and believes and on such information and belief alleges that in order to carry out the intent of MARCIA MacDONALD RIVAS, deceased, and fulfill the purpose of the bequest and power of appointment exercised under her Will to ALCOHOLICS ANONYMOUS, said gift should be made payable to Petitioner for the use and benefit of persons suffering from alcoholism or the effects of alcohol abuse for Petitioner to hold said gift in charitable trust for the use and benefit of organizations whose primary purpose is to aid, assist, educate, and otherwise benefit persons suffering from alcoholism or the effects of alcohol abuse.

11. Petitioner is informed and believes and on such information and belief alleges that various persons and organizations claim an interest in the Estate of Decedent

and the property in trust subject to Decedent's power of appointment; the rights of persons so claiming have not been determined by any judgment, order, or decree of any court of competent jurisdiction.

12. The names, relationships and addresses of the heirs of the Decedent and of all persons entitled to notice of the time and place of hearing of this Petition, so far as known to Petitioner are as follows:

*Name & Relationship*

NANCY G. JONES, mother

*Age*

adult

*Residence/mailing address*

1565 Meadow View Lane  
Reno, NV 89509  
46615 Eldorado Drive  
Indial Wells, CA 91260

*Name & Relationship*

ROBERTA PAWLAK, sister

*Age*

adult

*Residence/mailing address*

24650 Park Miramar  
Calabasas Park, CA 91302  
c/o Arthur Weiss, Esq.  
7051 Santa Monica Blvd.  
Los Angeles, CA 90038

*Name & Relationship*

MARCIA UNI, niece

*Age*

adult

*Residence/mailing address*

2355 Plum Street  
San Diego, CA 92106

*Name & Relationship*

JAMIE PAWLAK, nephew

*Age*

adult

*Residence/mailing address*

24650 Park Miramar  
Calabasas Park, CA 91302

*Name & Relationship*

MARCI DE LA TORRE, stranger

*Age*

adult

*Residence/mailing address*

c/o MacDonald Thoroughbred Farm  
Figueroa Mountain Road  
Los Olivos, CA 93441

*Name & Relationship*

LISA DE LA TORRE, stranger

*Age*

16

*Residence/mailing address*

c/o MacDonald Thoroughbred Farm  
Figueroa Mountain Road  
Los Olivos, CA 93441

*Name & Relationship*

TRINIDAD DE LA TORRE, stranger

*Age*

13

*Residence/mailing address*

c/o MacDonald Thoroughbred Farm  
Figueroa Mountain Road  
Los Olivos, CA 93441

*Name & Relationship*

JUAN RIVAS, stranger

*Age*

adult

*Residence/mailing address*

unknown

*Name & Relationship*

TOLEDO TRUST COMPANY  
Attn: GERALD W. MILLER

*Age*

adult

*Residence/mailing address*

3 Seagate  
Toledo, OH 43603

*Name & Relationship*

SAINT JOHN'S HOSPITAL and HEALTH CENTER

*Age*

*Residence/mailing address*

1328 22nd  
Santa Monica, CA 90404

*Name & Relationship*

MEMORIAL REHABILITATION FOUNDATION

*Age*

*Residence/mailing address*

300 North San Antonio Road  
Santa Barbara, CA 93110  
c/o Earl W. Favor, Esq.  
205 E. Carrillo Street  
Santa Barbara, CA 93101

*Name & Relationship*

CITY OF HOPE

*Age*

*Residence/mailing address*

208 West 8th Street  
Los Angeles, CA 90014

*Name & Relationship*

ARTHRITIS FOUNDATION

*Age*

*Residence/mailing address*

2944 De La Vina Street  
Santa Barbara, CA 93105  
c/o Archbald & Spray  
Attorneys at Law  
3944 State Street  
Santa Barbara, CA 93105  
Attn: W. Joe Bush, Esq.

*Name & Relationship*

**LOYOLA MARY MOUNT UNIVERSITY**

*Age*

*Residence/mailing address*

Loyola Blvd. and West 80th  
Los Angeles, CA 90045

*Name & Relationship*

**HEART ASSOCIATION OF SANTA BARBARA  
COUNTY**

*Age*

*Residence/mailing address*

146 East Carrillo Street  
Santa Barbara, CA 93101

*Name & Relationship*

**CHILD ABUSE LISTENING MEDIATION, INC.  
(CALM)**

*Age*

*Residence/mailing address*

P.O. Box 718  
Santa Barbara, CA 93102  
c/o L. Donald Boden, Esq.  
**GRIFFITH & THORNBURGH**  
P. O. Drawer A  
Santa Barbara, CA 93102

*Name & Relationship*

Large Animal Division of the SCHOOL OF VETERINARY MEDICINE, University of California

*Age*

*Residence/mailing address*

Davis, California

*Name & Relationship*

ALCOHOLICS ANONYMOUS, Central Office

*Age*

*Residence/mailing address*

1129 State Street  
Santa Barbara, CA 93101

*Name & Relationship*

MULTIPLE SCLEROSIS SOCIETY, Channel Islands  
Chapter

*Age*

*Residence/mailing address*

1727 State Street  
Santa Barbara, CA 93101  
c/o Howard M. Simon, Esq.  
SCHRAMM & RADDUE  
P.O. Box 1260  
Santa Barbara, CA 93102

Requests for Special Notice have been filed herein  
by several of the persons and organizations above listed

and notice of the time and place of hearing of this Petition will be given as required by law.

WHEREFORE, Petitioner prays that the Court determine who is entitled to the ten percent (10%) of the Trust Estate subject to Decedent's power of appointment as set forth in Article Sixth, Paragraph (I) of Decedent's Will dated March 14, 1980, and for other proper orders.

Dated: Sept. 12, 1983.

SANTA BARBARA FOUNDATION

By: /s/ L. L. WATHEY

L. L. Wathey

Treasurer

/s/ ROBERT L. BLETCHER

Robert L. Bletcher

Attorney for Petitioner

**Exhibit E**

FILED  
SUPERIOR COURT  
SEP 21 1983

HOWARD C. MENZEL, County Clerk-Recorder  
By C. TORRES

Deputy Clerk-Recorder

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name  
and Address)

Robert L. Bletcher, Esq.  
8 E. Figueroa St., Suite 210  
Santa Barbara, CA 93101

TELEPHONE NO.

(805) 965-1016

ATTORNEY FOR (Name) Petitioner

SUPERIOR COURT OF CALIFORNIA, COUNTY OF  
SANTA BARBARA

Street Address: 312 Cook Street  
Mailing Address: same  
City and ZIP Code: Santa Maria, CA 93454  
Branch Name: Santa Barbara Superior Court

ESTATE OF

MARCIA MacDONALD RIVAS aka  
MARCIA MacDONALD

Decedent

CASE NUMBER

SM 38985

**NOTICE OF HEARING (PROBATE)**

This notice is required by law. This notice does not require you to appear in court, but you may attend the hear-

ing if your wish. If you are a person interested in the estate, you may serve upon the executor or administrator, or upon the attorney for the executor or administrator, and file with the court with proof of service, a written request stating that you desire special notice of the filing of an inventory and appraisement of estate assets or of the petitions or accounts mentioned in sections 1200 and 1200.5 of the California Probate Code.

1. NOTICE is given that (name): SANTA BARBARA  
FOUNDATION

(representative capacity, if any): Petitioner

has filed (specify): PETITION FOR DETERMINA-  
TION OF ENTITLEMENT TO  
DISTRIBUTION OF ESTATE

reference to which is made for further particulars.

2. A hearing on the matter will be held

on (date): 10-6-83 at (time): 8:30 am in [X] Dept.:  
1 [ ] Div.: [ ] Room:

located at (address of court): 312 East Cook Street  
Santa Maria, CA 93454

HOWARD C. MENZEL,  
Clerk  
by /s/ (Illegible),  
Deputy

Dated: SEP 16 1983

CERTIFICATE OF [ ] POSTING [X] MAILING

I certify that I am not a party to this cause and that a true copy of the foregoing Notice of Hearing (Probate)

1. [ ] was posted at (address):

on (date):

2. [ ] was mailed, first class, postage fully prepaid, in a sealed envelope addressed to each person whose name and address is given below and that the notice was mailed and this certificate was executed on (date): at (place): , California.

Clerk,

by .....

Deputy

PROOF OF SERVICE BY MAIL

I am over the age of 18 and not a party to this cause. I am a resident of or employed in the county where the mailing occurred. My residence or business address is: 8 E. Figueroa Street, Suite 210, Santa Barbara, CA 93101

I served the foregoing Notice of Hearing (Probate) by enclosing a true copy in a sealed envelope addressed to each person whose name and address is given below and depositing the envelope in the United States mail with the postage fully prepaid.

(1) Date of deposit: 9-20-83 (2) Place of deposit (city and state): Santa Barbara, CA

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on (date): 9-20-83

/s/ KAREN KIRKMAN

(Type or Print Name)

/s/ KAREN KIRKMAN

(Signature of Declarant)

NAME AND ADDRESS OF EACH PERSON TO WHOM  
NOTICE WAS MAILED

See attached 3 page list.

*Name & Relationship*

NANCY G. JONES, mother

*Age*

adult

*Residence/mailing address*

1565 Meadow View Lane

Reno, NV 89509

46615 Eldorado Drive

Indial Wells, CA 91260

*Name & Relationship*

ROBERTA PAWLAK, sister

*Age*

adult

*Residence/mailing address*

24650 Park Miramar

Calabasas Park, CA 91302

c/o Arthur Weiss, Esq.

7051 Santa Monica Blvd.

Los Angeles, CA 90038

*Name & Relationship*

MARCIA UNI, niece

*Age*

adult

*Residence/mailing address*

2355 Plum Street

San Diego, CA 92106

*Name & Relationship*

JAMIE PAWLAK, nephew

*Age*

adult

*Residence/mailing address*

24650 Park Miramar  
Calabasas Park, CA 91302

*Name & Relationship*

MARCI DE LA TORRE, stranger

*Age*

adult

*Residence/mailing address*

c/o MacDonald Thoroughbred Farm  
Figueroa Mountain Road  
Los Olivos, CA 93441

*Name & Relationship*

LISA DE LA TORRE, stranger

*Age*

16

*Residence/mailing address*

c/o MacDonald Thoroughbred Farm  
Figueroa Mountain Road  
Los Olivos, CA 93441

*Name & Relationship*

TRINIDAD DE LA TORRE, stranger

*Age*

13

*Residence/mailing address*

c/o MacDonald Thoroughbred Farm  
Figueroa Mountain Road  
Los Olivos, CA 93441

*Name & Relationship*

JUAN RIVAS, stranger

*Age*

adult

*Residence/mailing address*

unknown

*Name & Relationship*

TOLEDO TRUST COMPANY  
Attn: GERALD W. MILLER

*Age*

adult

*Residence/mailing address*

3 Seagate  
Toledo, OH 43603

*Name & Relationship*

SAINT JOHN'S HOSPITAL and HEALTH CENTER

*Age*

*Residence/mailing address*

1328 22nd  
Santa Monica, CA 90404

*Name & Relationship*

MEMORIAL REHABILITATION FOUNDATION

*Age*

*Residence/mailing address*

300 North San Antonio Road  
Santa Barbara, CA 93110  
c/o Earl W. Favor, Esq.  
205 E. Carrillo Street  
Santa Barbara, CA 93101

*Name & Relationship*

CITY OF HOPE

*Age*

*Residence/mailing address*

208 West 8th Street  
Los Angeles, CA 90014

*Name & Relationship*

ARTHRITIS FOUNDATION

*Age*

*Residence/mailing address*

2944 De La Vina Street  
Santa Barbara, CA 93105  
c/o Archbald & Spray  
Attorneys at Law  
3944 State Street  
Santa Barbara, CA 93105  
Attn: W. Joe Bush, Esq.

*Name & Relationship*

LOYOLA MARYMOUNT UNIVERSITY

*Age*

*Residence/mailing address*

Loyola Blvd. and West 80th  
Los Angeles, CA 90045

*Name & Relationship*

HEART ASSOCIATION OF SANTA BARBARA  
COUNTY

*Age*

*Residence/mailing address*

146 East Carrillo Street  
Santa Barbara, CA 93101

*Name & Relationship*

CHILD ABUSE LISTENING MEDIATION, INC.  
(CALM)

*Age*

*Residence/mailing address*

P.O. Box 718  
Santa Barbara, CA 93102  
c/o L. Donald Boden, Esq.  
GRIFFITH & THORNBURGH  
P. O. Drawer A  
Santa Barbara, CA 93102

*Name & Relationship*

Large Animal Division of the SCHOOL OF VETERINARY MEDICINE, University of California

*Age*

*Residence/mailing address*

Davis, California

*Name & Relationship*

ALCOHOLICS ANONYMOUS Central Office

*Age*

\_\_\_\_\_

*Residence/mailing address*

1129 State Street  
Santa Barbara, CA 93101

*Name & Relationship*

MULTIPLE SCLEROSIS SOCIETY, Channel Islands  
Chapter

*Age*

*Residence/mailing address*

1727 State Street  
Santa Barbara, CA 93101  
c/o Howard M. Simon, Esq.  
SCHRAMM & RADDUE  
P.O. Box 1260  
Santa Barbara, CA 93102

*Name & Relationship*

CRIPPLED CHILDREN AND ADULTS EASTER  
SEAL SOCIETY OF SANTA BARBARA COUNTY

*Age*

*Residence/mailing address*

31 East Canon Perdido  
Santa Barbara, CA 93101

*Name & Relationship*

HATCH & PARENT, Attorneys at Law, creditors

*Age*

*Residence/mailing address*

21 East Carrillo St.  
Santa Barbara, CA 93101  
Attn: S. Timothy Buynak, Jr.

*Name & Relationship*

Attorney General of the State of California

*Age*

*Residence/mailing address*

555 Capitol Mall, Suite 350  
Sacramento, CA 95814

*Name & Relationship*

Marci De La Torre

*Age*

*Residence/mailing address*

c/o S. David Schwartz  
Attorney at Law  
3704 State Street, #205  
Santa Barbara, CA 93105

**Exhibit F**

ROBERT L. BLETCHER  
Attorney at Law  
Eight East Figueroa Street  
Suite 210  
Santa Barbara, California 93101  
Telephone: (805) 965-1016  
Attorney for Claimant

FILED  
SUPERIOR COURT  
OCT 13, 1983  
Howard C. Menzel, County Clerk-Recorder  
By C. Torres  
Deputy Clerk-Recorder

SUPERIOR COURT OF THE STATE  
OF CALIFORNIA  
COUNTY OF SANTA BARBARA

In the Matter of the Estate of )  
MARCIA MacDONALD RIVAS, aka ) No. SM38985  
MARCIA MacDONALD, )  
Deceased. )

**ORDER DETERMINING ENTITLEMENT TO  
DISTRIBUTION OF ESTATE**

The Petition for Determination of Entitlement to Distribution of Estate, filed herein by Santa Barbara Foundation, came on regularly for hearing on October 6, 1983. Petitioner appeared by its counsel, Robert L. Bletcher.

The Court finds as follows:

1. All notices of the hearing have been given as required law.

2. Pursuant to the terms of the Will of Marcia MacDonald Rivas, decedent, dated March 14, 1980, admitted to probate here on August 1, 1983, specifically pursuant to the provisions of Paragraph (I), Article Third thereof decedent duly exercised the power of appointment, in part, by giving 10% of the corpus of the Trust over which she had power of appointment to Alcoholics Anonymous, Central Office, 1129 State Street, Santa Barbara, California.

3. Alcoholics Anonymous, Central Office, 1129 State Street, Santa Barbara, California, an association organized and operated exclusively for charitable purposes, has declined to accept said gift and appointment, except for the sum of \$500.00.

4. Although Alcoholics Anonymous, the beneficiary of said power of appointment, has declined to accept said gift, except for the sum of \$500.00, decedent's intent should be carried into effect by appointing an organization to receive said funds and hold, administer, and distribute those assets for purposes similar to those of the designated donee.

5. Santa Barbara Foundation, is a California non-profit corporation, organized and operated solely for general, charitable, and eleemosynary purposes and is existing under the non-profit corporation laws of the State of California and is ready, able, and willing to accept the assets subject to said power of appointment and carry out the intent of decedent.

**NOW THEREFORE, IT IS ORDERED:**

1. 10% of the assets of that certain Trust entered into on or about January 25, 1960, between Nancy S.

Jones, as Donor, and The Toledo Trust Company, as Trustee, over which Marcia MacDonald Rivas had a testamentary special power of appointment, is hereby ordered distributed to Santa Barbara Foundation, to be held and administered as a charitable Trust as follows:

a. Purpose. The exclusive purpose for which these funds, and the income therefrom, shall be used is to support those charitable institutions, organizations and associations located in the County of Santa Barbara, State of California, to be selected from time to time in the discretion of the Trustee, which are exclusively dedicated to rehabilitating, aiding, assisting, educating and otherwise benefiting persons suffering from the effects of alcoholism and alcohol abuse.

b. Investment and Application of Trust Fund Income. The Trustee shall hold the trust funds and, in its discretion, invest it or parts of it in securities, mutual funds and accounts in financial institutions in which charitable Trustees are permitted to invest under the laws of the State of California, or retain the funds in cash, and collect the income.

c. Distribution of Income and Principal. The Trustee shall from time to time, but not less frequently than annually, pay to such charitable organizations, institutions and associations located in Santa Barbara County, California, which are specifically organized and dedicated to the purposes of this Trust, to be selected from time to time by the Trustees, all of the net income of said Trust. In addition thereto, the Trustee may, from time to time, pay to said

organizations, institutions, and associations, dedicated to the charitable uses and purposes of this Trust, those sums from principal as the Trustee, in the Trustee's discretion, considers necessary for the support of any such organizations, institutions, and associations. Each of said organizations, institutions and associations which receive trust funds must, at the time of receipt of the contribution by the Trustee, be one of those organizations defined in the Internal Revenue Code of the United States, contributions to which are deductible for income tax purposes. All payments of income and principal shall be made only to such qualified institutions, organizations, and associations as the Trustee in the Trustee's sole discretion, may from time to time determine as shall best fulfill the purposes of this Trust.

d. Restrictions on Use of Trust Fund. The trust fund and the income thereof shall be devoted exclusively to the purposes described above and shall in no part or in no event be given or contributed to or inure to the benefit of any private person, or corporation, except to the extent of the compensation of the Trustee.

e. Reimbursement and Compensation of Trustee.

The Trustee shall be reimbursed from the Trust Estate for all expenses reasonably incurred by it in the administration of the trust fund. The Trustee shall be entitled to such compensation for its services as the Trustee may from time to time determine as reasonable and such compensation shall be paid out of and charged to the trust fund.

f. Trustee Controls Funds. The Trustee shall have exclusive custody of the securities, cash, and other property of the trust fund and shall have the right to registered securities or other property held hereunder in the name of its nominee.

g. Appointment of Successor Trustee. In the case of resignation of the Trustee it shall apply to the Court for appointment of a successor Trustee, who shall thereafter have full power to act hereunder.

h. Irrevocable Trust. This Trust shall be irrevocable and may not be amended or modified, except by Court order first obtained.

i. Powers. The Trustee shall have all powers of a Trustee of a charitable trust as now or hereafter provided by law.

j. No Physical Division. The Trustee shall not be required to physically segregate the funds of this Trust but may co-mingle the assets with other charitable funds held or invested by Trustee. However, the Trustee shall keep separate accounts for this Trust.

Dated: October 13, 1983.

/s/ R. LEWELLEN

Judge of the Superior Court

**Exhibit G**

ARTICLES OF INCORPORATION  
of  
SANTA BARBARA FOUNDATION

KNOW ALL MEN BY THESE PRESENTS:

That we, the undersigned: EDWARD W. ALEXANDER, ELMER J. BISSELL, REXWALD BROWN, HAROLD S. CHASE, GEORGE W. CLYDE, WILLIAM R. DICKINSON, T. WILSON DIBBLEE, ROBERT E. EASTON, CHARLES A. EDWARDS, GEORGE S. EDWARDS, REGINALD G. FERNALD, MAX C. FLEISCHMANN, E. PALMER GAVIT, BERNHARD HOFFMANN, CHARLES H. JACKSON, JR., KIRK B. JOHNSON, SETH A. KEENEY, JAMES P. KENNEDY, GEORGE W. MACLELLAN, J. J. MITCHELL, DWIGHT MURPHY, FRANCIS PRICE, CHARLES B. RAYMOND, THOMAS M. STORKE, and GEORGE W. WILSON, have all this day voluntarily associated ourselves together for the purpose of forming a corporation under the laws of the State of California, and we hereby certify:

FIRST: That the name of said corporation shall be SANTA BARBARA FOUNDATION.

SECOND: That this corporation shall be a non-profit corporation organized solely for general charitable and eleemosynary purposes under and pursuant to section 606 of the Civil Code of the State of California.

The property of this non-profit corporation is irrevocably dedicated to charitable and eleemosynary purposes, and on dissolution none of its assets shall inure to any individual but shall be distributed to a fund or foundation whose property is dedicated to exempt purposes as spec-

ified in Revenue and Taxation Code 214 of the State of California.

THIRD: That the place where its principal business is to be transacted is at Santa Barbara, in the County of Santa Barbara, State of California.

FOURTH: That this corporation shall have perpetual existence.

FIFTH: The corporation shall have a total of seventeen (17) trustees, who shall constitute the directors of the corporation. The trustees shall be selected in the manner and for the term of office specified in the bylaws of the corporation.

SIXTH: That the names of the members of the first Board of Trustees, and the terms of office of such members are as follows, to wit:

<u>NAMES</u>	<u>TERMS OF OFFICE</u>
George W. Clyde	1 year
William R. Dickinson	1 year
Charles H. Jackson, Jr.	1 year
George S. Edwards	2 years
George W. MacLellan	2 years
Francis Price	2 years
Max C. Fleischmann	3 years
Dwight Murphy	3 years
Charles B. Raymond	3 years

SEVENTH: The corporation shall have no members.

EIGHTH: The Board of Trustees is authorized in its discretion at any time and from time to time to dele-

gate either in whole or in part to one or more trust companies or banks duly authorized to conduct a trust or banking business in the State of California, or to one or more firms or organizations registered as investment advisers under the Investment Advisers Act of 1940, the matter of controlling, managing, investing, and disposing of the property of this corporation for the purpose of earning an income therefrom as distinguished from the matter of applying property or funds to charitable and eleemosynary purposes.

NINTH: The Board of Trustees, acting by a majority vote of its members, shall have the power to adopt and enforce one or more bylaws authorizing the Board of Trustees, on the terms therein specified, to modify any restriction or condition on the distribution of assets or funds of the corporation for any specified organization, and to replace any Trustees, custodian or agent serving on behalf of the corporation for breach of fiduciary duty or for failure to produce a reasonable return of net income or appreciation when not inconsistent with the corporation's need for current income), with due regard to safety of principal, over a reasonable period of time.

ENDORSED  
FILED

In the office of the Secretary of State  
of the State of California

OCT 14 1981

MARCH FONG-EU, Secretary of State  
By JAMES E. HARRIS  
Deputy

CERTIFICATE OF AMENDMENT OF  
ARTICLES OF INCORPORATION  
OF SANTA BARBARA FOUNDATION

Arthur L. Brown and James L. Free, Jr. hereby  
certify that:

1. They are the President and Secretary, respectively, of the Santa Barbara Foundation, a California nonprofit public benefit corporation.
2. The Articles of Incorporation of said corporation shall be amended by amending Article Eighth thereof to read in its entirety as follows:

EIGHTH: The Board of Trustees is authorized in its discretion at any time and from time to time to delegate either in whole or in part to one or more trust companies or banks duly authorized to conduct a trust or banking business in the State of California, or to one or more firms or organizations registered as investment advisers under the Investment Advisers Act of 1940, the matter of controlling, managing, investing, and disposing of the property of this corporation for the purpose of earning an income therefrom as distinguished from the matter of

applying property or funds to charitable and eleemosynary purposes.

3. The foregoing amendment has been approved by the Board of Trustees of said corporation.

4. The foregoing amendment is one which may be adopted with the approval of the Board of Trustees of said corporation alone, because said corporation has no members and the approval of no other person is required under the Articles of Incorporation of said corporation.

IN WITNESS WHEREOF, the undersigned have executed this Certificate of Amendment on October 8th, 1981.

/s/ ARTHUR L. BROWN

Arthur L. Brown, President

/s/ JAMES L. FREE, JR.

James L. Free, Jr., Secretary

#### VERIFICATION

The undersigned, Arthur L. Brown and James L. Free, Jr., the President and the Secretary, respectively, of the Santa Barbara Foundation, each declares under penalty of perjury that the matters set forth in the foregoing Certificate of Amendment are true of his own knowledge.

Executed at Santa Barbara, California on October 8th, 1981.

/s/ ARTHUR L. BROWN

Arthur L. Brown

/s/ JAMES L. FREE, JR.

James L. Free, Jr.

**CALIFORNIA PROBATE CODE § 1200.5**

**§ 1200.5. Manner of giving notice in certain instances; time; mailing; proof of giving notice; application of section**

*Text of section operative until July 1, 1987.*

(a) Notice shall be given in the manner prescribed in subdivision (b) upon the filing of any of the following:

(1) A petition under Section 641 for the setting aside of an estate.

(2) A petition to set apart a homestead or exempt property.

(3) A petition relating to the family allowance filed after the return of the inventory.

(4) A petition for leave to settle or compromise a claim against a debtor of the decedent or a claim against the estate or a suit against the executor or administrator as such.

(5) A petition for the sale of stocks or bonds.

(6) A petition for confirmation of a sale or a petition to grant an option to purchase real property.

(7) A petition for leave to enter into an agreement to sell or give an option to purchase a mining claim or real property worked as a mine.

(8) A petition for leave to execute a promissory note or mortgage or deed of trust or give other security.

**Underline indicates changes or additions by amendment**

- (9) A petition for leave to lease or to exchange property, or to institute an action for the partition of property.
- (10) A petition for an order authorizing or directing the investment of money.
- (11) An account of an executor or administrator or trustee.
- (12) A petition for partial or ratable or preliminary or final distribution.
- (13) A petition for the delivery of the estate of a nonresident.
- (14) A petition for determination of heirship or interests in an estate.
- (15) A petition of a trustee for instructions.
- (16) A petition for the appointment of a trustee.
- (17) Any petition for letters of administration or for probate of will, or for letters of administration-with-will annexed, which is filed after letters of administration or letters testamentary have once been issued.
- (18) A report of status of administration.
- (19) A petition for family allowance.
- (20) An objection to the appraisement made by the executor, administrator, or probate referee.
- (21) A petition under Section 709 for leave to file a claim against the estate after the expiration of the prescribed period.
- (22) Any other proceeding under this code in which notice is required and no other time or method is prescribed by law or by court or judge.

(b) At least 10 days before the time set for the hearing of the petition or account, the petitioner or person filing the account shall cause notice of the time and place of hearing to be mailed to the executor or administrator, when he or she is not the petitioner, to any coexecutor or coadministrator not petitioning, and to all persons (or to their attorneys, if they have appeared by attorney), who have requested notice or who have given notice of appearance in the estate in person or by attorney, as heir, devisee, legatee or creditor, or as otherwise interested, addressed to them at their respective post office addresses given in their request for special notice, if any, otherwise at their respective offices or places of residence, if known, and if not, at the county seat of the county where the proceedings are pending, or to be personally served upon such person.

(c) Proof of the giving of notice shall be made at the hearing; and, if it appears to the satisfaction of the court that the notice has been regularly given, the court shall so find in its order, and the order shall be conclusive upon all persons when it becomes final.

(d) This section does not apply to proceedings under Division 4 (commencing with Section 1400). When a provision of Division 4 applies the provisions of this code applicable to executors or administrators to proceedings under Division 4, a reference to this section in the provisions applicable to executors or administrators shall be deemed to be a reference to Chapter 3 (commencing with Section 1460) of Part 1 of Division 4.

(e) The notice required by this section shall be in addition to the notice, if any, required to be given in the manner specified in Section 1200.

(Amended by Stats.1982, c. 520, p. 2446, § 11; Stats.1984, c. 451, p. 20.3; Stats.1984, c. 1017, p. ...., § 6.)

*For text of section operative July 1, 1987, see § 1200.5, post.*

**§ 1200.5. Manner of giving notice in certain instances; time; mailing; proof of giving notice; application of section**

*Text of section operative July 1, 1987.*

(a) Notice shall be given in the manner prescribed in subdivision (b) upon the filing of any of the following:

(1) A petition under Section 641 for the setting aside of an estate.

(2) A petition to set apart a homestead or exempt property.

(3) A petition relating to the family allowance filed after the return of the inventory.

**Asterisks \*\*\* indicate deletions by amendment**